



**CITY OF YONKERS**

**BUREAU OF PURCHASING  
CITY HALL – ROOM 102  
40 SOUTH BROADWAY  
YONKERS, NEW YORK 10701-3888  
Telephone (914) 377-6030; Fax (914) 377-6032**

**COVER SHEET**

**SOLICITATION & CONTRACT DOCUMENTS FOR**

**INSTALLATION OF AUTOMATIC METER READING SYSTEM INCLUDING WATER METER  
REPLACEMENT**

**BID NUMBER: ITB-5738**

**OPENING DATE: FEBRUARY 6, 2013 - 2 PM**

**BOCS APPROVAL DATE: \_\_\_\_\_**  
*Assigned by Purchasing*

**CONTRACT NO.: \_\_\_\_\_**  
*Assigned by Purchasing*

**BIDDER TO FILL OUT (PRINT):**

**NAME OF BIDDER:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**CONTACT:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**PHONE NO.:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**E-MAIL:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**– DO NOT RETURN ENTIRE BID PACKAGE –  
ONLY RETURN WHAT IS LISTED IN “INFORMATION FOR BIDDERS”, PAGE 6**

## IMPORTANT INFORMATION FOR BIDDERS

### Prevailing Wage

A New York State Department of Labor (NYSDOL) Prevailing Wage Rate Case Number has been assigned to this project. The PRC case number is # **2012010346**.

To access the prevailing wage rate schedule for this project, enter the PRC number at the following New York State Dept. of Labor webpage: <http://wpp.labor.state.ny.us/wpp/showFindProject.do?method=showIt>

Complete NYSDOL requirements can be viewed at  
<http://www.labor.state.ny.us/workerprotection/publicwork/PWContents.shtm>

Upon issuance of the Notice of Acceptance/Contract Award, the Purchasing Department will notify the NYSDOL with the following information:

- Contractor name, address, and federal employer identification number;
- Contract amount;
- Approximate start and completion dates

### NYSDOL Requirements for OSHA 10 Compliance

If the resultant contract is \$250,000 or more, the Contractor must certify that every worker employed for this project has completed an OSHA 10 safety training course prior to performing any work on the project. Valid proof of completion of the OSHA 10 training course includes copies of bona fide course completion card and training roster, attendance record, or other documentation from the certified trainer. Simply attesting that all employees have completed the course is not sufficient proof of completion.

### Apprenticeship Agreement

In accordance with Yonkers City Council Resolution No. 234-2002 (December 23, 2002), the following information is hereby incorporated into the Bid Specifications:

Prior to entering into construction contracts, contractors and subcontractors must have apprenticeship agreements appropriate for the type and scope of work performed, that have been registered with, and approved by, the Commissioner pursuant to the requirements found in Article 23 Section 816-B of the New York State Consolidated Law.

*Article 23 can be found at:*

<http://www.labor.state.ny.us/formsdocs/app/NYSCLA23.pdf#page=1>

### Plumbing and Electrical Contractors

All Plumbing or Electrical Contractors engaged on this project must be licensed by the Trades Licensing Division of the Office of the Westchester County Clerk. 914-995-2657; Fax 914-995-3092; Email: [CC-Licensing@WestchesterGov.com](mailto:CC-Licensing@WestchesterGov.com)

The Westchester County Master Plumbing and Electrician licensing database can be viewed at:  
[http://www.westchestergov.com/elecplumb/MPL.asp?Sort\\_Type=ASC&Sort\\_By=Company&Sort\\_By2=LName,FName,LicenseNum&Sort\\_Stage=E&Temp\\_Stage=B](http://www.westchestergov.com/elecplumb/MPL.asp?Sort_Type=ASC&Sort_By=Company&Sort_By2=LName,FName,LicenseNum&Sort_Stage=E&Temp_Stage=B)

### All Bid Documents and Addenda Published Online

All Contractors are encouraged to register online with the Empire State Purchasing Group at <http://www.govbids.com/scripts/hvmpg/public/home1.asp> to receive additional notifications of bid opportunities from the City of Yonkers and over 130 government agencies from New York State. This is a regional bid notification system that provides instant access to all participating agencies, Bids, RFPs, Request for Quotes, and Amendments online from one website.

Vendors are also encouraged to visit the Yonkers Purchasing Department website at <http://www.yonkersny.gov/Index.aspx?page=1269> to learn more about doing business with the City of Yonkers.

**Payments:** The City of Yonkers requires all vendors to receive payments electronically. To obtain the City's Electronic Funds Transfer (EFT) authorization form, please visit the City website at [www.yonkersny.gov](http://www.yonkersny.gov). A copy of the form will be appended to all contract documents, and completion is required at the time of contract execution.

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			PAGE
ATTACHMENT A	<input checked="" type="checkbox"/> Applicable	<input type="checkbox"/> N/A	71-75
SUPPLEMENTARY CONDITIONS	<input type="checkbox"/> Applicable	<input checked="" type="checkbox"/> N/A	
MULT-PRIME CLAUSES	<input type="checkbox"/> Applicable	<input checked="" type="checkbox"/> N/A	
SPECIFICATION UPDATES			N/A
TECHNICAL SPECIFICATIONS			76-97
PREVAILING WAGE RATE SCHEDULE	To access the prevailing wage rate schedule for this project, enter the project's <b>Prevailing Wage Rate Case Number <u>2012010346</u></b> at the following New York State Dept. of Labor webpage: <a href="http://wpp.labor.state.ny.us/wpp/showFindProject.do?method=showIt">http://wpp.labor.state.ny.us/wpp/showFindProject.do?method=showIt</a>		

LIST OF DOCUMENTS:	SEE SEPARATE ATTACHMENTS <input checked="" type="checkbox"/>
ITB-5738 Account Query	Pages Excel Spreadsheet
ITB-5738 Meters in Pit Query	Pages Excel Spreadsheet
ITB-5738 City Map	Pages 1 page
	Pages
	Pages

CITY OF YONKERS

INFORMATION FOR BIDDERS COVER SHEET – BID NO. ITB-5738

1. Bid No.: ITB-5738
2. Description: INSTALLATION OF AUTOMATIC METER READING SYSTEM  
INCLUDING WATER METER REPLACEMENT
3. Place of Performance: City of Yonkers
4. Date, Time, and Place Bids are Due: Date: February 6, 2013  
Time: 2 PM  
Place: YONKERS BUREAU OF PURCHASING  
40 SOUTH BROADWAY, ROOM 102  
YONKERS, N.Y. 10701
5. Pre-Bid / Site Inspection: Date: January 4, 2013 Time: 10 AM  
Location: City Hall  
40 South Broadway, Room to be determined  
Yonkers, NY 10701  
Notify Tom Collich if planning to attend.
6. Purchasing Contact Name: Tom Collich  
Phone: 914.377.6035 Fax: 914.377.6032  
E-mail: [Thomas.collich@yonkersny.gov](mailto:Thomas.collich@yonkersny.gov)

All questions regarding the contents of this bid must be submitted in writing to the Purchasing Contact listed above. Questions may be submitted by fax or email. Answers to all inquiries will be given to all prospective vendors in the form of a formal addendum to the solicitation and shall be annexed to and become part of the ensuing contract.

Only written addenda issued by the Bureau of Purchasing shall be binding. No officer, employee, or agent of the City is authorized to clarify or amend the Solicitation Documents by any other method, and any such clarification or amendment, if given, is not binding on the City. **Prospective Bidders are reminded that it is their responsibility to ensure that they receive all addenda.**

NOTE: The City does not disclose bid results over the telephone. If you did not attend the bid opening and want the bid results, you can view the bid tabulation online at <http://www.yonkersny.gov/Index.aspx?page=1302>.

## INFORMATION FOR BIDDERS

### I. Description and Location of Work; and Time and Place for Receipt of Bids:

The description and location of the work for which bids are requested and the time and place for receipt of bids are set forth on the Cover Sheet of the Information for Bidders.

### II. Bid Submission Requirements:

The following items are to be completed AND RETURNED as part of the bid:

- A. Bid Cover Sheet, Page 1
- B. Bid Schedule of Prices – Itemized, Page 10 & Attachment A ☒ Lump Sum, Page 11 ☐
- C. Bid and Bidder's Affidavit – Pages 12-16 - **SIGNED AND NOTARIZED.**
- D. Bid Security – Pages 17 – 21 – **SIGNED AND NOTARIZED.**
- E. Vendor Background Questionnaire – Pages 33-38 - **SIGNED AND NOTARIZED.**
- F. Article 59, Page 67 and Page 68 or 69 (whichever applies) – **RETURN THREE SIGNED AND NOTARIZED COPIES OF EACH.**

*Non-compliance with any of the above bid submission requirements may result in the disqualification of the bid. DO NOT RETURN ENTIRE BID PACKAGE - ONLY RETURN THE PAGES LISTED ABOVE.*

### III. Deposit for Receiving Bid Documents: ☐ Applicable ☒ Not Applicable

Copies of the Contract Documents including Drawings and Specifications may be obtained from the City of Yonkers Bureau of Purchasing. Bids should only be made upon the bid forms obtained in the Bid package from the Bureau of Purchasing. Copies of the Contract Documents may be obtained by prospective bidder upon a deposit of a personal or company check made payable to the City of Yonkers, in the amount of \$50.00 per set. For bidders, the deposit for one set of Contract Documents will be refunded in full, for documents returned in good condition, as determined by the City, and a fifty percent (50%) refund of deposit(s) for additional set(s) returned in similar condition within thirty (30) days after award or rejection of bids. For non-bidders, only fifty percent (50%) of the deposit will be refunded for the documents.

### IV. Examination of the Contract Documents and Site:

- A. Prospective Bidders shall examine the Contract Documents carefully and, before bidding, shall make a written request to the Purchasing Director for clarification of any ambiguity, or correction of any inconsistency or error in the documents. Every request for such clarification must be received at least ten (10) days prior to the date fixed for the opening of the bid. Such clarification or correction, as well as any additional Contract provisions the City shall decide to include shall be issued in writing by the City or its designee as an addendum, which shall be sent by certified or registered mail, or by overnight mail, or by fax, or delivered to each prospective Bidder recorded as having received a copy of the Contract Documents from the City and shall be available at the place where the Contract Documents are available for inspection by prospective Bidders. Upon issuance, such addenda shall be binding on all Bidders. The requirements contained in all Contract Documents shall apply to all addenda.
- B. Only interpretations, corrections or additional Contract provisions made in writing by the City as addenda shall be binding. No officer, agent or employee of the City is authorized to clarify or correct the Contract Documents by any other method, and any such clarification or correction, if given, is not binding on the City.

- C. At the time of the opening of bids, each Bidder shall be presumed to have inspected the site and to be thoroughly familiar with all the Contract Documents. The failure of any Bidder to obtain, to examine all Contract Documents, or to request a clarification or correction, shall in no way relieve any Bidder from any obligation in respect to the bid of such Bidder.
- D. Any subsequently alleged ambiguity, not raised by the successful bidder prior to the submission of his or her bid, shall be conclusively and unilaterally resolved by the Purchasing Director.

V. Site Inspection / Pre-Bid Conference: ☒ Applicable ☐ Not Applicable

A pre-bid conference for all prospective Bidders may be held at a time and place to be announced by the City for the purpose of discussing the Contract Documents and requirements in an informal setting. Persons or firms who obtain copies of the Bidding Documents prior to the date of the pre-bid conference will be notified of the exact time that the pre-bid conference will be held. Prospective Bidders are encouraged to attend this pre-bid conference. Nothing stated at the pre-bid conference shall change the terms and/or conditions of the Contract unless memorialized in writing as required herein.

VI. Preparation and Submission of Bids:

- A. Bids must be submitted on the forms supplied by the City. Bids shall be enclosed in a sealed envelope, addressed to the City and marked with the name and address of the Bidder, the Bid Number, the Bid Opening date and time, and the description of the Project. All blank spaces for bid prices must be filled in, using both words and figures. In the event of a discrepancy between the Bid Amount in words and the Bid Amount in figures, the Bid Amount in words shall govern. Conditional bids shall be rejected. Bids shall not contain any recapitulation of the Work to be done. No oral, telegraphic, telephonic or faxed bids or modifications shall be considered.
- B. Bids that are illegible or that contain omissions, alterations, additions or items not called for in the bidding documents may be rejected as non-responsive. Any bid which modifies, limits, or restricts all or any part of such bid, other than as expressly provided for in the Contract Documents, will be rejected as non-responsive.
- C. The City may reject as non-responsive any bid not prepared and submitted in accordance with the provisions of the Contract Documents.
- D. Any bid may be withdrawn prior to the scheduled time for the opening of bids or the postponed date, if any.
- E. Any bid received after the date and time that the bids are due will not be accepted.
- F. A Bidder may not withdraw its bid during the **NINETY (90) calendar day** period following the actual date of the opening without prior approval of the City.
- G. Unbalanced bids may be rejected at the discretion of the City. Unbalanced bids shall be deemed to include any bid on any item which is not, in the opinion of the City based on a bona fide price for which the bidder can furnish the articles or perform the work covered by said item at cost or with substantially the same percentage of profit as he estimates to receive on the Contract as a whole.

VII. Determination of Bidder Responsibility; Vendor Background Questionnaire:

- A. Bidders will be obligated to submit completed Vendor Background Questionnaires with this bid as set forth in this paragraph. Bidders who have submitted Vendor Background

Questionnaires within the last 12-months may attach a copy of the previously submitted form, making all necessary updates to assure the accuracy at the time of the bid.

- B. In addition, prior to the award of a contract, the City will conduct such investigations as the City deems necessary to determine the responsibility of any Bidder and/or to determine the ability of any Bidder to perform the Work. All apparent low bidders are subject at the time of bid to a financial analysis.

The City may require the Bidder to submit one or more of the following:

1. Further detailed breakdown of its Bid Amount in a format and level of detail acceptable to the City.
2. The names and resumes of key personnel (down to level of superintendent) the bidder intends to assign to the work if awarded a contract.
3. The portions of the Work that the bidder intends to subcontract by trade and estimated dollar amount of each.
4. A list of contracts, award dates, award amounts and Owner contact persons for projects the Bidder has recently been awarded or is currently working on.

The Bidder shall furnish the above information within three (3) business days of its receipt of the City's written request.

- C. The City reserves the right to reject any bid if the information required by the City is not submitted as required or if the information submitted fails to satisfy the City that the Bidder is responsible, or is able or qualified to carry out the obligations of the Contract, or to complete the Work as contemplated.

VIII. Required Bonds:     ☒ Applicable     ☐ Not Applicable

- A. **BID SECURITY.** The bidder is required to submit bid security in an amount and type specified in the Schedule "A" to the General Agreement. All Bid Bonds received in connection with this bid will be returned to the Bidders, except the three lowest Bidders, within five days after the formal opening of bids; and the remaining Bid Bonds, except for the lowest responsible bidder, will be returned to the other bidders, after the Board of Contract and Supply has awarded the Contract.
- B. **PERFORMANCE SECURITY.** The bidder is required to submit performance security in the amount specified in Schedule "A" to the General Agreement. The performance security shall be delivered by the Contractor to the City within ten (10) business days after the receipt of a Notice of Award. If a Contractor fails to deliver the required performance security, the award shall be rescinded, its bid security shall be enforced and award of the Contract may be made to the next lowest responsible bidder or the Contract may be rebid.
- C. **PAYMENT SECURITY.** Payment security is required for all construction contracts in accordance with State law in the amount specified in Schedule "A" of the General Agreement. The payment security shall be delivered by the Contractor to the City within ten (10) business days after the receipt of a Notice of Award. If a Contractor fails to deliver the required payment security, the award shall be rescinded, its bid security shall be enforced and award of the Contract may be made to the next lowest responsible bidder or the Contract may be re-bid.
- D. **ACCEPTABLE SECURITY.** Acceptable security for bids, performance and payment shall be limited to:
1. A bond in a form satisfactory to the City – **Note: AIA bond forms are NOT ACCEPTABLE.**
  2. A bank certified check or money order.

- E. Attorneys in fact who sign said bonds on behalf of a surety must affix to each bond a certified copy of their power of appointment, indicating the effective period.
- F. All bonds must be submitted on the exact form provided in the bid and contract documents.

IX. Award of Contract, Rejection of Bids:

- A. SUBJECT TO THE CITY'S RIGHT TO REJECT ANY AND ALL BIDS, THE AWARD OF THE CONTRACT SHALL BE MADE TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.
- B. The City may reject all bids and may elect to re-solicit bids if in its sole opinion it shall deem it in its best interest to do so.
- C. Rejection of all bids and negotiations with responsible bidders
  - 1. The City may determine that it is appropriate to cancel the selection process after bid opening and before award and to complete the acquisition by negotiation. This determination shall be based on one of the following reasons:
    - (a) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the City cannot determine the reasonableness of the bid price, or no responsible bid has been received from a responsible bidder; or
    - (b) In the judgment of the City the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
  - 2. When the City has determined that the Invitation for Bids is to be cancelled and that use of negotiation is appropriate to complete the acquisition, the City may negotiate and award the Contract without issuing a new solicitation subject to the following conditions:
    - (a) prior notice of the intention to negotiate and a reasonable opportunity to negotiate have been given by the City to each responsible bidder that submitted a timely bid;
    - (b) the negotiated price is the lowest negotiated price offered by any responsible bidder; and
    - (c) the negotiated price is lower than the lowest rejected bid price of a responsible bidder that submitted a timely bid.
- D. Tie Bids. When two or more low responsible bidders are identical in price, the City will break the tie by giving priority first to a City of Yonkers bidder, second to a County of Westchester, New York bidder, and third to a State of New York bidder. If after such preferences are given a tie still remains, the award shall be made by a drawing by lot. The bidders involved shall be invited to attend the drawing.

X Audit by the Inspector General:

- A. Any Vendor who believes that there has been unfairness, favoritism or impropriety in the bid process should inform the Inspector General of the City of Yonkers, Yonkers City Hall, Yonkers, New York 10701, telephone number (914) 377-7000.
- B. The Inspector General may, in his or her discretion, audit the bid process or otherwise investigate any allegations of wrongdoing and, if deemed necessary, issue a report on his or her findings to the Board of Contract and Supply.

XI Authority to Do Business in New York

Any corporation not incorporated under the Laws of New York State must furnish a copy of its Certificate of Authority from the New York State Secretary of State to do business in the State of New York, in accordance with Article 13 of the New York State Business Corporation Law. You may get additional information at: Department of State, Division of Corporations, 41 State Street, Albany, NY 12231 (518-473-2492).

COMPLETE THIS FORM IN INK

BID NO.: ITB-5738

**BID SCHEDULE OF PRICES - ITEMIZED**

**SEE ATTACHMENT A**

For furnishing and providing all the necessary material, machinery, plant, implements, tools, labor, services, skill and other items of whatever nature required, and to do and perform all the work necessary under the Contract, to complete the work in accordance with the Drawing and Specifications and any Addenda thereto and to accept in full compensation therefore the amount of the total bid stated, the sum of:

**TOTAL BID, ITEMS 1 TO 17, INCLUSIVE, THE SUM OF:**

**PLEASE PRINT:**

Written in Words: \_\_\_\_\_

\_\_\_\_\_ Dollars \_\_\_\_\_ Cents

Written in Figures: \$ \_\_\_\_\_

Discount for Prompt Payment: \_\_\_\_\_ % \_\_\_\_\_ Days, Net 30.

The Bidder hereby acknowledges receipt of all Solicitation Documents and Addenda through and including Addendum number \_\_\_\_\_ (Bidder to insert number of last Addendum received.)

Availability to Start Work: \_\_\_\_\_

Contractor: \_\_\_\_\_

Address of Bidder: \_\_\_\_\_

Is this business a Certified Minority / Women Business Enterprise in New York State?

☐ Yes ☐ No

Prepared By: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Date: \_\_\_\_\_

**BID SCHEDULE OF PRICES - LUMP SUM BID**

For furnishing and providing all the necessary material, machinery, plant, implements, tools, labor, services, skill and other items of whatever nature required, and to do and perform all the work necessary under the Contract, to complete the work in accordance with the Drawing and Specifications and any Addenda thereto and to accept in full compensation therefore the amount of the total bid stated, the Lump Sum Bid of:

**PLEASE PRINT**

Written in Words; \_\_\_\_\_

\_\_\_\_\_ Dollars \_\_\_\_\_ Cents.

Written in Figures: \$ \_\_\_\_\_

Discount for Prompt Payment: \_\_\_\_\_ % \_\_\_\_\_ Days, Net 30.

The Bidder hereby acknowledges receipt of all Solicitation Documents and Addenda through and including Addendum number \_\_\_\_\_ (Bidder to insert number of last Addendum received.)

Availability to Start Work: \_\_\_\_\_

Contractor: \_\_\_\_\_

Address of Bidder: \_\_\_\_\_

Is this business a Certified Minority / Women Business Enterprise in New York State?

☐ Yes ☐ No

Prepared By: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Date: \_\_\_\_\_

**BID AND BIDDER'S AFFIDAVIT**

Bid No.: **ITB-5738**

By submission of this bid and the execution of the Bidder's Affidavit, the Bidder hereby submits a binding offer to furnish all required work and meet all other obligations set forth in the Contract Documents, and all addenda thereto, whether received by the undersigned or not; for the total sum indicated below:

Bid Amount: \_\_\_\_\_  
\_\_\_\_\_  
Dollars, \_\_\_\_\_ Cents  
(printed or typed in words)  
\$ \_\_\_\_\_  
(Total Bid in Figures)

By submission of this bid, the Bidder acknowledges that it has read all the contents of this document including the Important Information for Bidders, Information for Bidders, Schedule "A", General Agreement, General Conditions, Supplementary Conditions, Engineering Department Rules and Regulations, Technical Construction Specifications, Drawings, the Prevailing Wage Schedule for Article 8 Public Work Project (PRC# **2012010346**), and all addenda, if any.

Bid Made by:  
(Firm Name) \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature-Authorized Officer) (Print Name) (Print Title)

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Tax ID Number: \_\_\_\_\_ Date: \_\_\_\_\_

Email: \_\_\_\_\_

The Bidder's authorized representative on this Project shall be:

\_\_\_\_\_

Additionally, by submission of this bid and the execution of the Bidder's Affidavit each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies on behalf of its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

- A. The prices in the bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- B. Unless otherwise required by law, the prices which have been quoted in the bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

- C. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- D. The bidder is not in arrears to the City of Yonkers upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of Yonkers;
- E. The bid prices are to cover all expenses of every kind incidental to the completion of the work and the Contract therefore, including all claims that may arise through damage or any other cause whatever, and for those items for which the prices are established in the Specifications, hereby agree to perform such additional work and supply such additional material at the prices therein established;.
- F. The Bidder shall make no claim on account of any variations between the quantities of the approximate estimate and the quantities of the work as done, nor on account of any misconception or misunderstanding of the nature and character of the work to be done, or of the ground or place where it is to be done;
- G. The bidder is the only one interested in this bid; and it is made without any connection with any other person or persons making an estimate for the same work, and is in all respects fair, and without collusion or fraud;
- H. No member of the municipal government of the City of Yonkers nor any officer or employee of the City, is directly or indirectly interested in this bid, or in the supplies or the material for the work or in any portion of the profit thereof;
- I. Fair and Ethical Business Practices will be strictly adhered to during the life of this Contract. During the term of this Contract, neither the Bidder nor any director, partner, principal, officer or employee shall:
  - 1) File with a government office or employee, a written instrument which intentionally contains a false statement or false information;
  - 2) Intentionally falsify business records;
  - 3) Give, or offer to give, money or any other benefit to a labor official with intent to influence that labor official with respect to any of his or her acts, duties or decisions as a labor official;
  - 4) Give, or offer to give, money or any other benefit to a public servant with intent to influence that public servant with respect to any of his or her acts, duties or decisions as a public servant; and
  - 5) Knowingly participate in the criminal activities of any organized crime group, syndicate or family, nor shall any person employed by or associated with any such organized crime family, syndicate or group participate through criminal means in any of the business affairs of the Bidder.
- J. In addition, if it becomes known that any director, partner, officer, employee of the Bidder, or any shareholder owning 5% or more of the Bidder's stock:
  - 1) is the subject of investigation involving any violation of criminal law or other federal, state or local law or regulation by any governmental agency; or
  - 2) is arrested, indicted or named as an unindicted co-conspirator in any indictment or other accusatory instrument; or
  - 3) is convicted of any felony under state or federal law and/or any misdemeanor involving a business-related crime.

The Bidder shall immediately notify the City of any such event.

AFFIDAVIT WHERE THE BIDDER IS A CORPORATION

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_

as:

\_\_\_\_\_being duly sworn,

says:

I am a member of \_\_\_\_\_,  
the above named corporation whose name is subscribed to and which executed the foregoing bid. I reside at

\_\_\_\_\_  
\_\_\_\_\_.

I have full knowledge of the matters pertaining thereto.

\_\_\_\_\_  
(Signature of the person who signed the Bid)

ACKNOWLEDGEMENT WHERE THE CONTRACTOR IS A CORPORATION

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally came  
\_\_\_\_\_, to me known, who, being by me duly sworn,  
did depose and say that he/she resides at \_\_\_\_\_, that  
she is the \_\_\_\_\_ of \_\_\_\_\_, the  
corporation described in and which executed the above instrument; and that he/she signed his/her name  
thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

If a Corporation, Bidder must complete both Affidavit and Acknowledgement sections and submit this page  
with its bid

(Bid and Bidder's Affidavit – Bid # **ITB-5738** )

## AFFIDAVIT WHERE BIDDER IS A PARTNERSHIP

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_

as:

\_\_\_\_\_being duly sworn,

says:

I am a member of \_\_\_\_\_ the above named partnership whose name is subscribed to and which executed the foregoing bid. I reside \_\_\_\_\_

at \_\_\_\_\_

\_\_\_\_\_. I have full knowledge of the

matters pertaining thereto.

(Signature of the person who signed the Bid)

ACKNOWLEDGEMENT OF CONTRACTOR, IF A PARTNERSHIP

STATE OF \_\_\_\_\_)

) ss:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be a member of the firm \_\_\_\_\_; described in and who executed the foregoing instrument; and he/she duly acknowledged to me that he/she executed the same for and in behalf of said firm for the uses and purpose mentioned therein.

Notary Public

If a Partnership, Bidder must complete both Affidavit and acknowledgement sections and submit this page with its bid.

(Bid and Bidder's Affidavit – Bid # **ITB-5738** )

AFFIDAVIT WHERE BIDDER IS AN INDIVIDUAL

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_

as:

\_\_\_\_\_ being duly sworn,

says:

I am the person who submitted the foregoing bid. I have full knowledge of the matters pertaining thereto.

\_\_\_\_\_  
(Signature of the person who signed the Bid)

ACKNOWLEDGEMENT OF CONTRACTOR, IF AN INDIVIDUAL

STATE OF \_\_\_\_\_)

) ss:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me personally same  
\_\_\_\_\_, to me known and known to me to be the person described in  
and who executed the foregoing instrument, and he/she duly acknowledged that the/she executed the same.

\_\_\_\_\_  
Notary Public

If an Individual, Bidder must complete both Affidavit and Acknowledgement sections and submit this page with its bid.

(Bid and Bidder's Affidavit – Bid # **ITB-5738** )

**FORM OF BID BOND**

City of Yonkers  
Bureau of Purchasing

Yonkers City Hall  
Yonkers, New York 10701

**BID NO.: ITB-5738**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned

\_\_\_\_\_  
(Bidder's Legal Title)

as principal and \_\_\_\_\_  
(Surety's Legal Title)

as Surety, are hereby held and firmly bound unto the City of Yonkers, Yonkers City Hall, Yonkers, N.Y. in the penal sum of

\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_)

or in the full and just sum of the difference between the total bid of the Principal and the total bid of the Bidder submitting the next lowest bid, whichever sum shall be higher, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

The condition of the above obligation is such that whereas the Principal has submitted to the City of Yonkers, Yonkers City Hall, Yonkers, N. Y., a certain bid, attached hereto and made a part hereof to enter into a Contract in writing for the construction of \_\_\_\_\_

located at \_\_\_\_\_.

NOW, THEREFORE,

- (A) If said bid shall be rejected or in the alternate
- (B) If said bid shall be accepted and the Principal shall furnish a bond for the faithful performance of said Contract by the Principal, and for the payment of said persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event exceed the penal amount of this obligation as herein stated.
- (C) The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and said Surety's bond in no way shall be impaired or affected by any extension of

time within which the City may accept such bid; and said Surety does hereby waive notice of any such extension.

- (D) In the event that the Bid of the Principal shall be accepted and the Contract be awarded to him or her, the Surety hereunder agrees subject only to the payment by the Principal of the premium therefore, if requested by the City, to write the Performance and Payment Bonds in the form set forth in Contract Documents herein.

IN THE WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals and such of them are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by the proper officers, the day and year first set forth above.

(SEAL) \_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

(SEAL) By:\_\_\_\_\_

(BID BOND – Bid # **ITB-5738** )

**ACKNOWLEDGEMENT OF CONTRACTOR, IF A CORPORATION**

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_, day of \_\_\_\_\_ in the year 20\_\_\_\_ before me personally came  
\_\_\_\_\_ to me known (or proved to me on the basis of satisfactory evidence), who, being  
by me duly sworn, did depose and say that he/she resides at  
\_\_\_\_\_, that he/she is the  
\_\_\_\_\_ of \_\_\_\_\_, the corporation described  
in and which executed the above instrument, and that he/she signed his/her name thereto by order of the Board of  
Directors of said corporation.

\_\_\_\_\_  
Notary Public

(BID BOND – Bid # **ITB-5738** )

**ACKNOWLEDGEMENT OF CONTRACTOR, IF A PARTNERSHIP**

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known (or proved to me on the basis of satisfactory evidence), and known to me to be a member of firm \_\_\_\_\_; described in and who executed the foregoing instrument; and he/she duly acknowledged to me that he/she executed the same for and in behalf of said firm for the uses and purpose mentioned therein.

\_\_\_\_\_  
Notary Public

(BID BOND – Bid # **ITB-5738** )

**ACKNOWLEDGEMENT OF CONTRACTOR, IF AN INDIVIDUAL**

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_\_\_, before me personally came \_\_\_\_\_, to me known (or proved to me on the basis of satisfactory evidence) and known to me to be the person described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

\_\_\_\_\_  
Notary Public

(BID BOND – Bid # **ITB-5738** )

### ATTORNEY IN FACT ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year of 200\_\_\_\_, before me personally came \_\_\_\_\_ the attorney in fact of \_\_\_\_\_ the Company named in the foregoing contract, to me known to be the individual described in and who, as such attorney, executed the foregoing contract, and acknowledged that he/she executed the same as the Act and deed of the said party or parties; therein described as Consultant, and for the purpose therein mentioned, by virtue of a power of attorney duly executed and acknowledged by the said party or parties, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_; that said powers of attorney is still in full force.

\_\_\_\_\_  
Notary Public

### ACKNOWLEDGEMENT OF SURETY

STATE OF \_\_\_\_\_ )

CITY \_\_\_\_\_ ) ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_\_\_, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

(BID BOND – Bid # **ITB-5738** )

**PERFORMANCE BOND**

City of Yonkers  
Bureau of Purchasing

Yonkers City Hall  
Yonkers, New York 10701

**BID NO.: ITB-5738**

KNOW ALL MEN BY THESE PRESENTS;

That \_\_\_\_\_  
(Here insert the name and address or legal title of the contractor)

as Principal, (hereinafter called "Principal"), and \_\_\_\_\_

\_\_\_\_\_  
(Here insert the legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto the City of Yonkers, City Hall, Yonkers, New York 10701, as obligee, (hereinafter called the "City"), in the amount of

\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, PRINCIPAL has entered into a contract with the City for the construction of \_\_\_\_\_ located at \_\_\_\_\_ in accordance with drawings \_\_\_\_\_ and specifications which are made a part hereof and which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, his/her or its representatives or assigns, shall well and faithfully perform the said contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, and shall fully indemnify and save harmless the City from all cost and damage which it may suffer by reason of failure so to do, and shall fully reimburse and repay the City for all outlay and expense which the City may incur in making good any such default, then this obligation shall be void, otherwise the same to remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees, if requested to do so by the City, to fully perform and complete the work to be performed under the contract, pursuant to the terms, conditions, and covenants thereof, if for any cause, the Principal fails or neglects to successfully perform and complete such work. The Surety further agrees to commence such work of completion within twenty (20) days after written notice thereof from the City and to complete such work within such time as the City may fix.

The Surety, for value received, for itself and its successors and assigns hereby stipulates and agrees that the obligation of said Surety and its bond shall in no way be impaired or affected by any extension of time, modification, omission, addition, or change in or to the said contract or the work to be performed thereunder or by any payment thereunder before the time required therein, or by any waiver of any provisions, thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or by any moneys due or to become due thereunder; and said Surety does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontract and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees subcontractors, and other transferee's shall have the same effect as to said Surety as though done or omitted to be done by or in relation to said Principal.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which Final Payment is made under the Contract.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the heirs, executors, administrators or successors of the City.

Signed as of this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
IN THE PRESENCE OF:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

(PERFORMANCE BOND – Bid # **ITB-5738** )

**ACKNOWLEDGEMENT OF CONTRACTOR, IF A CORPORATION**

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came \_\_\_\_\_ to me known (or proved to me on the basis of satisfactory evidence), who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

(PERFORMANCE BOND – Bid # **ITB-5738** )

**ACKNOWLEDGEMENT OF CONTRACTOR, IF A PARTNERSHIP**

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known (or proved to me on the basis of satisfactory evidence), to me to be a member of firm \_\_\_\_\_; described in and who executed the foregoing instrument; and he/she duly acknowledged to me that he/she executed the foregoing instrument; and that he/she duly acknowledged to me that he/she executed the same for and in behalf of said firm for the uses and purpose mentioned therein.

\_\_\_\_\_  
Notary Public

(PERFORMANCE BOND – Bid # **ITB-5738** )

**ACKNOWLEDGEMENT OF CONTRACTOR, IF AN INDIVIDUAL**

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known (or proved to me on the basis of satisfactory evidence) and known to me to be the person described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

\_\_\_\_\_  
Notary Public

(PERFORMANCE BOND – Bid # **ITB-5738** )

### ATTORNEY IN FACT ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came  
\_\_\_\_\_  
the attorney in fact of  
\_\_\_\_\_ the Company named in the foregoing contract, to me  
known to be the individual described in and who, as such attorney, executed the foregoing contract, and  
acknowledged that he/she executed the same as the Act and deed of the said party or parties; therein described as  
Consultant, and for the purpose therein mentioned, by virtue of a power of attorney duly executed and acknowledged  
by the said party or parties, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; that said powers of  
attorney is still in full force.

\_\_\_\_\_  
Notary Public

(PERFORMANCE BOND – Bid # **ITB-5738** )

### ACKNOWLEDGEMENT OF SURETY

STATE OF \_\_\_\_\_ )

CITY \_\_\_\_\_ ) ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came  
\_\_\_\_\_ to me known, who, being by me duly sworn, did depose and  
say that he/she resides at \_\_\_\_\_, that he/she is the  
\_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, the corporation described in and which executed the above instrument; and that he/she signed  
his/her name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC OR COMMISSIONER OF DEEDS

(PERFORMANCE BOND – Bid # **ITB-5738** )

**LABOR AND MATERIAL PAYMENT BOND**

City of Yonkers  
Bureau of Purchasing

Yonkers City Hall  
Yonkers, New York 10701

**BID NO.: ITB-5738**

KNOW ALL MEN BY THESE PRESENTS;

That \_\_\_\_\_  
(Here insert the name and address of legal title of the Contractor)  
as Principal, (hereinafter called "Principal"). and \_\_\_\_\_

\_\_\_\_\_  
(Here insert the legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto the City of Yonkers, Yonkers City Hall, Yonkers, New York 10701, as Obligees, (hereinafter called the City), in the amount of

\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_)  
for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, PRINCIPAL has by written agreement dated \_\_\_\_\_ entered into a contract with the City for the construction of \_\_\_\_\_

Located at \_\_\_\_\_ in accordance with drawings and specifications which are made a part hereof and which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise such obligation shall remain in full force and effect, subject, however to the following conditions:

1. A claimant is defined as one having a direct Contract with the Principal or with a Subcontractor of the Principal for labor material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above named Principal and Surety hereby jointly and severally agree with the City that every claimant as herein defined, ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due

claimant, and have execution thereon. The City shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

- (a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two (2) of the following: 1) the Principal, 2) the City, 3) the Surety named above, within one hundred-twenty (120) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be serviced by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, the City or Surety, at any place where an office is regularly maintained by said Principal, the City or Surety for the transaction of business, or serviced in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.
- (b) After the expiration of two (2) years following the date on which Principal ceased work of said Contract, however, if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to the equal to the minimum period of limitation permitted by such law.
- (c) Other than in State court competent jurisdiction in and for the country or other political subdivision of the State in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanic's liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed as of this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

IN THE PRESENCE OF; \_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

(LABOR & MATERIAL PAYMENT BOND – Bid # **ITB-5738**

**ACKNOWLEDGEMENT OF CONTRACTOR, IF A CORPORATION**

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came \_\_\_\_\_ to me known (or proved to me on the basis of satisfactory evidence), who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

(LABOR AND MATERIAL PAYMENT BOND – Bid # **ITB-5738** )

**ACKNOWLEDGEMENT OF CONTRACTOR, IF A PARTNERSHIP**

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known (or proved to me on the basis of satisfactory evidence), to me to be a member of firm \_\_\_\_\_; described in and who executed the foregoing instrument; and he/she duly acknowledged to me that he/she executed the foregoing instrument; and that he/she duly acknowledged to me that he/she executed the same for and in behalf of said firm for the uses and purpose mentioned therein.

\_\_\_\_\_  
Notary Public

(LABOR AND MATERIAL PAYMENT BOND – Bid # **ITB-5738** )

**ACKNOWLEDGEMENT OF CONTRACTOR, IF AN INDIVIDUAL**

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known (or proved to me on the basis of satisfactory evidence) and known to me to be the person described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

\_\_\_\_\_  
Notary Public

(LABOR AND MATERIAL PAYMENT BOND – Bid # **ITB-5738** )

**ATTORNEY IN FACT ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came  
\_\_\_\_\_ the attorney in fact of  
\_\_\_\_\_ the Company named in the foregoing contract,  
to me known to be the individual described in and who, as such attorney, executed the foregoing contract,  
and acknowledged that he/she executed the same as the Act and deed of the said party or parties; therein  
described as Consultant, and for the purpose therein mentioned, by virtue of a power of attorney duly  
executed and acknowledged by the said party or parties, bearing date the \_\_\_\_\_ day of  
\_\_\_\_\_ 20\_\_\_\_; that said powers of attorney is still in full force.

\_\_\_\_\_  
Notary Public

(LABOR AND MATERIAL PAYMENT BOND – Bid # **ITB-5738** )

**ACKNOWLEDGEMENT OF SURETY**

STATE OF \_\_\_\_\_ )

CITY \_\_\_\_\_ ) ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came  
\_\_\_\_\_ to me known, who, being by me duly sworn, did  
depose and say that he/she resides at  
\_\_\_\_\_, that he/she is the  
\_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, the corporation described in and which executed the above instrument; and that  
he/she signed his/her name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC OR COMMISSIONER  
OF DEEDS

(LABOR AND MATERIAL PAYMENT BOND – Bid # **ITB-5738** )

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City Hall – Suite 102  
40 South Broadway  
Yonkers, New York 10701  
(914) 377-6035  
Fax: (914) 377-6032  
thomas.collich@yonkersny.gov

## CITY OF YONKERS

### *Purchasing*

*Mike Spano, Mayor*

*Tom Collich, Director*

### VENDOR BACKGROUND QUESTIONNAIRE

**BID NUMBER ITB-5738**

**OPENING DATE 2/6/2013**

This questionnaire has been developed to collect information from vendors/contractors wishing to do business with the City of Yonkers.

Please complete the questionnaire carefully, answering all questions accurately. Answers **must be typewritten or printed in black or blue ink**. If you need more space to answer a question, **type or print the answer on company letterhead** and attach it to the questionnaire. **ANSWER ALL QUESTIONS - DO NOT LEAVE BLANKS**. Failure to submit a complete and accurate questionnaire may result in your bid or proposal being rejected as non-responsive and, therefore, ineligible for award.

**GENERAL INFORMATION** Initial Application: YES ☐ NO ☐ Revision: YES ☐ NO ☐

1. Submitting Business Name \_\_\_\_\_  
EIN/SSN \_\_\_\_\_  
Dun & Bradstreet # \_\_\_\_\_  
“Doing Business As” Name(s), if any \_\_\_\_\_  
Business Address and date business \_\_\_\_\_  
located at this address \_\_\_\_\_  
Other business addresses, if any (satellite \_\_\_\_\_  
offices, plants, warehouses, branch offices \_\_\_\_\_  
headquarters, etc.) \_\_\_\_\_  
Mailing address, if different from above \_\_\_\_\_  
  
Telephone Number \_\_\_\_\_  
Fax Number \_\_\_\_\_  
E-Mail \_\_\_\_\_  
Contact Person and Title \_\_\_\_\_
2. Does this business now, or has it in the past 10 years, used an EIN, SSN, Name, Trade Name or abbreviation other than those given in the above question? YES ☐ NO ☐ If YES, please provide details and explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Has this business changed address(es) in the past five years? YES ☐ NO ☐. If YES, please provide all complete former addresses:

\_\_\_\_\_

4. a. Date business was formed \_\_\_\_\_  
b. Date business was incorporated \_\_\_\_\_

5. Type of Organization (Please circle one)

- a. Business Corporation  
State/County in which incorporated \_\_\_\_\_  
Name of individuals/entities incorporating business \_\_\_\_\_  
b. Sole Proprietorship  
c. General Partnership/ Limited Partnership  
State or County where partnership certificate/agreement is filed \_\_\_\_\_  
d. Joint Venture  
e. Non Profit  
f. Not for Profit  
g. Other (Explain) \_\_\_\_\_

6. Type of Business (Please circle one)

- a. Manufacturing  
b. Distribution  
c. Retail  
d. Commercial Service  
e. Professional Service, Non Construction, Non-Law  
f. Bank  
g. Construction Manager  
h. Architect  
i. Engineer  
j. General Contractor  
k. Consultant (Specify) \_\_\_\_\_  
l. Laboratory Testing and Analysis  
m. Law Firm  
n. Other (Explain) \_\_\_\_\_

7. Has this business been certified by a government entity (SBA, NYC, etc.) as a Minority Business, Women-Owned Business, Disadvantaged Business or Small Business Enterprise? YES ☐, NO ☐.  
If YES, please explain. \_\_\_\_\_

\_\_\_\_\_

- a. Do you perform outreach to any of these Enterprises to perform subcontracting work?  
YES ☐, NO ☐
- b. Will you use one of these Enterprises as a subcontractor on work performed for the City of Yonkers? YES ☐, NO ☐ If YES, explain. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **BUSINESS HISTORY**

8. Was this business purchased as an existing business by its present owners? YES ☐, NO ☐  
If YES, please provide date of purchase and name(s) of previous owner(s). \_\_\_\_\_
9. Does this business own ☐, rent ☐, or lease ☐ its office facilities? **(Please check one)**  
If leased or rented, please provide name, address, and telephone number of building owner/landlord. \_\_\_\_\_
10. Does this business share office space, staff, equipment, or expenses with any other business or not-for-profit organization? YES ☐, NO ☐ If YES, please provide the name and address of the other entity and nature of relationship to this business. \_\_\_\_\_
11. Will this business use or occupy any real property, other than the addresses listed in response to Question 1., to carry out the terms of any contract you may receive from the City of Yonkers? YES ☐, NO ☐. If YES, please provide details and explain. \_\_\_\_\_

## **BUSINESS PRINCIPALS**

12. For all proprietors, partners, directors, officers, shareholders of 5% or more of the businesses' issued stock, any manager or individual who takes part in overall policy making or financial decisions for the business, and any person in a position to control or direct the businesses' overall operations, please provide name, home address, date of birth, social security number, title, percentage of ownership, and business telephone number.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
13. Number of Employees \_\_\_\_\_
14. Is this business now or has it been in the last five years a subsidiary of another business? YES ☐, NO ☐. In this period, has another business been a partner in this business, or has another business been affiliated with this business through common ownership, management or agreement, or has another business owned 5% or more of this business? YES ☐, NO ☐. If YES, please provide details and explain. \_\_\_\_\_
15. Has this business or any other business listed in response to question 14 pledged or hypothecated 5% or more of its stock to another business or to an individual to guarantee payment for a debt or obligation? YES ☐, NO ☐. If YES, please provide details and explain. \_\_\_\_\_

16. Is this business or any business listed in response to question 14 now or has it been in the last five years:

- a. The owner of 5% or more or in control of another business, an affiliate or a subsidiary? YES ☐, NO ☐
- b. A vendor of or contractor to the City of Yonkers? YES ☐, NO ☐
- c. A subcontractor on any contract with the City of Yonkers? YES ☐, NO ☐.

If YES to any above, please provide details and explain. \_\_\_\_\_

17. Are any of the persons listed in answer to question 12 now or have been in the past, elected or appointed officials or officers or employees of the City of Yonkers? YES ☐, NO ☐

If YES, please provide details and explain. \_\_\_\_\_

18. Has this business or any business listed in response to question 14 at present or has it ever been:

- a. Debarred by any agency\* from entering contracts? YES ☐, NO ☐.
- b. Found not responsible by any government agency? YES ☐, NO ☐.
- c. Declared in default and/or terminated for cause on any contract, and/or had any contract cancelled for cause? YES ☐, NO ☐.
- d. Suspended by any government agency from entering any contract with it? YES ☐, NO ☐.
- e. Party to any action pending that could formally debar or otherwise effect this business' ability to bid or propose on contracts? YES ☐, NO ☐.
- f. A respondent before the Grand Jury or any Federal, State or City Board? YES ☐, NO ☐
- g. Unable to execute a contract with a government agency because it could not provide the required security or obtain a surety bond? YES ☐, NO ☐.
- h. Required to pay liquidated damages on a contract? YES ☐, NO ☐.
- i. In default on any obligation to, or subject to any unsatisfied judgment or lien obtained by a government agency, including judgments based on taxes owed? YES ☐, NO ☐.
- j. Filed a bankruptcy petition or been subject to any involuntary bankruptcy proceedings? YES ☐, NO ☐.
- k. Subject of termination for cause or revocation of permits, licenses, concessions, franchises, or leases? YES ☐, NO ☐.
- l. Subject of a criminal investigation\*\* or civil anti-trust investigation by any Federal, State or Local prosecutorial or investigative agency? YES ☐, NO ☐.
- m. Subject of an investigation by any government agency, including regulatory agencies (Security Exchange Commissions, Federal Communications Commission, Department of Consumer Affairs, etc.) YES ☐, NO ☐.

**If you answered YES TO ANY OF THE QUESTIONS IN ITEM 18, please provide details including dates, agency/entity names, and disposition \_\_\_\_\_**

\* Government agency includes City, State and Federal Public Agencies, quasi-public agencies, authorities and corporations, public development corporations and local development corporations.

\*\* An investigation includes an appearance before a grand jury by a person or representatives of a business entity, any oral or written inquiry or review of documents by a public agency, temporary commission or other investigative body, or questioning concerning the general operation or a specific project or activities of business entity or the activities of a person.

19. In the last five years, have any of the persons listed in response to question 12:

- a). Been the subject of an investigation involving any alleged violation of criminal law? YES ☐, NO ☐.

- b). Been arrested, indicted or named as an unindicted co-conspirator in any indictment or other legal instrument? YES ☐, NO ☐.
- c). Been convicted, after trial or by plea, of any felony under State or Federal Law? YES ☐, NO ☐.
- d). Been convicted of any misdemeanor involving business-related crimes? YES ☐, NO ☐.
- e). Entered a plea of nolo contendere in a legal proceeding? YES ☐, NO ☐.
- f). Entered a consent decree? YES ☐, NO ☐.
- g). Been granted immunity from prosecution for any business-related conduct constituting a crime under State or Federal Law? YES ☐, NO ☐.

**If you answered YES TO ANY OF THE QUESTIONS IN ITEM 19, please provide details including dates, agency/entity names, and disposition \_\_\_\_\_**

20. Has any person listed in response to question 12 been employed by or affiliated with any person or business that has:
- a. Been the subject of an investigation involving any alleged violation of criminal law? YES ☐, NO ☐.
  - b. Been arrested, indicted or named as an unindicted co-conspirator in any indictment or other legal instrument YES ☐, NO ☐.
  - c. Been convicted, after trial or by plea, of any felony under State or Federal Law? YES ☐, NO ☐.
  - d. Been convicted of any misdemeanor involving business-related crimes? YES ☐, NO ☐.
  - e. Entered a plea of nolo contendere in a legal proceeding? YES ☐, NO ☐.
  - f. Entered a consent decree? YES ☐, NO ☐.
  - g. Been granted immunity from prosecution for any business – related conduct constituting a crime under State or Federal Law? YES ☐, NO ☐.

**If you answered YES TO ANY OF THE QUESTIONS IN ITEM 20, please provide details including dates, agency/entity names, and disposition \_\_\_\_\_**

21. Has this or any business listed in response to question 14 or any person listed in response to question 12 failed to pay any applicable Federal, State or Local government taxes for the past five years? YES ☐, NO ☐. If YES, explain \_\_\_\_\_

22. In the past five years, has this or any business listed in response to question 14 or any person listed in response to question 12 committed any act of collusion, bid rigging or price fixing in submitting a competitive bid? YES ☐, NO ☐.

If YES, explain \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

23. Licensing: List jurisdiction and trade categories in which your organization is legally qualified to do business (if applicable), and attach legible copies of registrations and/or licenses.

Jurisdiction

Trade Category

_____	_____
_____	_____
_____	_____

### CERTIFICATION

A materially false statement willfully or fraudulently made in connection with this questionnaire is sufficient cause for rendering the business entity not responsible with respect to the present bid or proposal and future bids or proposals, and in addition, may subject the person and/or entity making the false statement to criminal charges, including but not limited to New York State Penal Law sections 175.35 (Offering a false statement for filing) and 210.40 (Sworn false statement) and/or Title 18 U.S.C. sections 1001 (False or fraudulent statement) and 1341 (Mail fraud).

I, \_\_\_\_\_, being duly sworn, state that I am the  
Print or Type Name of Bidder/Proposer Authorized Representative

\_\_\_\_\_ of \_\_\_\_\_, and Print or  
Type Title of Bidder/Proposer Authorized Representative      Print or Type Name of Entity Submitting  
Bid/Proposal

I have read and understand the questions contained in the attached questionnaire and its appendices. I certify that to the best of my knowledge the information given in response to each question and appendices is full, complete, and truthful.

I will notify the City of Yonkers in writing of any change in circumstances occurring after the submission of this questionnaire and before the execution of any contract with the City.

I acknowledge that the City of Yonkers may, by means it deems appropriate, determine the accuracy and truth of the statements made in this questionnaire.

I recognize that all information submitted is for the express purpose of inducing the City to enter a contract with the submitting business entity.

I authorize the City to contact any entity or person named in this questionnaire, for purposes of verifying the information submitted.

\_\_\_\_\_  
Signature of Bidder/Proposer Authorized Representative

STATE OF \_\_\_\_\_)

) ss:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally came  
\_\_\_\_\_, to me known and known to me to be the person  
Print or Type Name of Bidder/Proposer Authorized Representative

described in and who executed the foregoing instrument, and he/she duly acknowledged that he/she executed the same.

\_\_\_\_\_  
Notary Public

**Place Notary Public Stamp Here:**

**SCHEDULE "A" to the GENERAL AGREEMENT**

Bid No.: **ITB-5738**

Contract No. \_\_\_\_\_

Description: **City-wide Tree Removal Services**

<b><u>Reference</u></b>	<b><u>Item</u></b>	<b><u>Requirement</u></b>
Information for Bidders Section VIII	Bid Security	<b><u>5</u></b> % of Bid Amount
Information for Bidders Section: VIII	Performance/ Payment Security	<b><u>100</u></b> % of Contract Amount
Agreement Article 11	Time of Completion	Total Consecutive Calendar Days <b><u>365</u></b>
Agreement Article 11	Liquidated Damages	For Each Consecutive Calendar Day Over Completion Time <b><u>\$TBD</u></b>
Agreement Article 15	Subcontracts	Not to Exceed 49% of the Contract
Agreement Article 17	Insurance	See below
Agreement Article 18	Maintenance Deposit	(a) 1% of Contract Amount (b) Other _____

Where indicated by an (x), Insurance in the amounts specified below are required under this Contract.

---

(x)	Worker's Compensation	Statutory
(x)	Employer's Liability	\$1,000,000 each Accident

---

(x) Commercial General Liability – Combined Single Limit-Bodily Injury and Property Damage:

\$1,000,000 per occurrence

\$1,000,000 Products/Completed Operations Aggregate

\$3,000,000 General Aggregate

\$25,000 Maximum Deductible

---

(x) Automobile Liability – Combined Single Limit – Bodily Injury and Property Damage:

\$1,000,000 per person each occurrence for Bodily Injury

\$100,000 per occurrence Property Damage

The following coverage must be provided:

(x) Comprehensive (x) Owned (x) Hired (x) Non-Owned

---

In addition, if indicated by an (x), the following hazards must be covered:

( ) Excess Insurance \_\_\_\_\_

( ) Other \_\_\_\_\_

---

(x) Additional Named Insured:

**City of Yonkers**

( ) Other \_\_\_\_\_

## **CONTRACTORS INSURANCE REQUIREMENTS – YONKERS**

### **GENERAL PROVISIONS**

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The City Engineer, Certificates of Insurance evidencing compliance with all requirements contained in this Contract. Such Certificates shall be of form and substance acceptable to The City.

Acceptance and/or approval by the City, its agents or employees, does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor, shall be maintained by the insurance carriers licensed and admitted to do business in New York State, and acceptable to the City; shall be primary and non-contributing to any insurance or self insurance maintained by the City; shall be endorsed to provide written notice be given to the City, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidence by return of receipt of United States Certified Mail and shall name the Contractor and identify the contract number, shall be sent to the City Engineer and shall name The City of Yonkers, its officers, agents and employees as additional insureds thereunder (General Liability Additional Insured Endorsement shall be on form number CG 20 10 11 85.)

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the City. Such approval shall not be unreasonably withheld. The City reserves the right to withhold portion of payment until the deductible is satisfied.

Each insurance carrier must be rated at least "A" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A" the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the City and rated at least "A" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply the City updated replacement Certificates of Insurance and amendatory endorsements.

If at any time, a non-admitted carrier that has to be used becomes financially unsatisfactory to the City, immediate replacement will be required. Failure to do so may void the contract.

### **A. WORKER'S COMPENSATION INSURANCE**

Before performing any work on the Contract, the Contractor shall procure Worker's Compensation Insurance and Disability Benefits in accord with the Laws of the State of New York on behalf of all employees who are to provide labor or service under this contract. Two (2) certificates of such insurance shall be furnished to the City Engineer.

### **B. EMPLOYER'S LIABILITY INSURANCE**

Before performing any work on the Contract, the Contractor shall procure Employer's Liability Insurance affording compensation for all employees providing labor or services for whom worker's compensation coverage is not a statutory requirement. Two (2) certificates of such insurance shall be furnished to the City Engineer.

### **C. COMMERCIAL GENERAL LIABILITY**

Before commencing work at the site, the Contractor shall procure a commercial general liability insurance policy (issued by a New York admitted carrier) with a limit of not less than \$1,000,000 each occurrence. This insurance policy must be maintained during the life of the contract and shall protect the City, the Contractor and its subcontractors performing work at the site from claims for property damage and/or bodily injury which may arise from operations under this contract, whether such operations are performed by it or anyone directly or indirectly employed by it.

Two (2) certificates of insurance shall be furnished to the Engineer in a manner acceptable to the City, together with copies of all endorsements as required by this Contract. Such liability shall be written on the Insurance Service Office's (ISO) occurrence form CG 0001 or a substitute form providing equivalent coverages and shall cover liability arising from:

- (1) Premises – Operations
- (2) Independent Contractors and Subcontractors
- (3) Products and Completed Operations
- (4) Broad Form Property Damages
- (5) Personal and Advertising Injury

Additional coverages and limits may be required based upon the particular services contracted.

- (i) All contracts involving explosives, demolition and underground work shall provide the above coverage with elimination of the XCU exclusion.
- (ii) Products and Completed Operations coverage shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the owner of all Contractors work.
- (iii) Products and Completed Operations coverage shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the owner for all Contractor's work.

#### D. GENERAL LIABILITY AND AUTOMOBILE ENDORSEMENTS AND EXCLUSIONS

1. The following endorsements are required to be made on all policies:
  - (a) Notice shall be addressed to the City Engineer, Yonkers City Hall, 3<sup>rd</sup> Floor, Yonkers, New York, 10701.
  - (b) Notice of Cancellation of Policy. The policy shall not be canceled, terminated, modified, or changed by the Company unless thirty (30) days prior written notice is sent to the City Engineer.
  - (c) Insurers shall have no right of recovery or subrogation against the City (including its agents and agencies as aforesaid), it being the intention of the parties that the insurance policies so effected shall protect both parties and may be primary coverage for any and all losses covered by the above described insurance.
2. In addition to the additional insureds set forth herein, the following shall also be added as additional insureds:
3. The policy shall contain no exclusions or endorsements, which are not acceptable to the City and shall be of a form and by an insurance company acceptable to the City.

#### E. CONSTRUCTION INSURANCE

1. For the construction, renovation or repair of bridges, viaducts or similar structures, the Contractor at his own cost and expense shall provide and maintain a "Bridge Builder's Risk Form, All Risk Insurance Contract," with flat premium endorsement, until the construction contract is accepted by the City's Board of Contract and Supply. The coverage shall be written for 100% of the completed value, covering the City of Yonkers as the insured, with a deductible of not more than \$100, as recommended by the New York State Department of Insurance. The Contractor shall provide the original and duplicate policy to the City (unless the City shall accept, in lieu thereof, all contained endorsements including all applicable provisions and coverages).
2. Commercial Property Insurance covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents or employees, staging towers and forms, and property of the City held in their care, custody and/or control.
3. During the performance of the Construction Work, Restoration or Alteration, builder's risk completed value form covering the perils insured under the ISO special cases of loss form, including collapse, water damage, and transit and theft of building materials, with the deductible reasonable approved by the Senate, in non reporting form, covering the

total value of work performed and equipment, supplies and materials at any off-site storage location used with respect to the Project.

4. If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, the Contractor shall maintain in full force and effect throughout the term hereof, pollution legal liability insurance with the limits of not less than \$1,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against The City arising from Contractor's work.
  - a. If the coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage be maintained, or an extended discovery period exercised, for a period of not less than 2 years from the time of work under this contract is completed.
  - b. If the Contract includes disposal of materials from the job site, the Contractor must furnish to The City, evidence of pollution legal liability insurance in the amount of \$1,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under this Contract.
5. The Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain, errors and omissions liability insurance with a limit of not less than \$1,000,000 per loss.
  - a. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring or laboratory analyses.
  - b. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract, and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.
6. If autos are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

The Contractor shall require that any subcontractor hired, carry insurance with the same limits and provisions provided herein.

F. OTHER PROVISIONS

1. The Contractor is required to obtain and to maintain bonds and insurance outlined herein.
2. The bonds and insurance required for this contract must be on forms acceptable to the City and offered by insurers and sureties acceptable to the City. The insurance and bonds for all New York contractors must be issued by New York authorized carriers and must comply with all requirements of New York Law and Regulation, and in the case of bonds, be in the exact form as provided in the bid and contract documents.
3. The City, may at its discretion, and if approved by the City of Yonkers Law Department, accept letters of credit or custodial accounts in lieu of bonds and insurance requirements.
4. If at any time any of the foregoing bonds and policies shall be or become unsatisfactory to the City, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the City, the Contractor shall upon notice to that effect from the City, promptly obtain a new policy, and submit the same to the City Engineer. Upon failure of the Contractor to furnish, deliver and maintain such insurance as above provided, this contract, at the election of the City may be forthwith declared suspended, discontinued or terminated. Failure of the Contractor to take out and/or maintain or the taking out and/or maintenance of any required insurance, shall not relieve the Contractor from any liability be construed to conflict with or otherwise limit the obligations of the Contractor concerning indemnification.
5. The Contractor shall be solely responsible for payment of all premiums for bonds and insurance contributing to satisfaction of the requirements herein, and shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of Yonkers is named as additional insured.
6. The City reserves the right to increase or decrease the required insurance during the Contract.

## CITY OF YONKERS

### GENERAL AGREEMENT

This GENERAL AGREEMENT (the "General Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_ in 20\_\_\_\_ by and between the City of Yonkers ("City") and \_\_\_\_ (the "Contractor"), located at \_\_\_\_, in consideration of the mutual agreements contained herein

#### ARTICLE 1. THE CONTRACT

A. Except for titles, subtitles, headings, running headlines, tables of contents, and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of this Contract:

- 1) The Advertisement;
- 2) The Information For Bidders;
- 3) The Bid and Bidder's Affidavit;
- 4) The General Agreement;
- 5) Schedule "A" to the General Agreement;
- 6) The Specifications;
- 7) The Contract Drawings;
- 8) All Addenda issued by the City;
- 9) All provisions required by law to be inserted in this contract, whether actually inserted or not;
- 10) The Notice of Award;
- 11) Performance and Payment Bonds and Insurance Policies and Certificates; and,
- 12) Notice to Proceed.

#### ARTICLE 2. DEFINITIONS

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Contract, be construed as follows, unless a different meaning is clear from the context: (\* The use of any third person pronoun is not meant to be gender indicative.)

**"ADDENDUM"** or **"ADDENDA"** shall mean the additional Contract provisions issued in writing by the City prior to the receipt of bids.

**"BOARD OF CONTRACT and SUPPLY"** shall have the meaning set forth in Article 4 below.

**"CITY"** shall mean the City of Yonkers.

**"CONTRACT"** or **"CONTRACT DOCUMENTS"** shall mean each of the various parts of the Contract referred to in Article 1 hereof, both as a whole and severally.

**"CONTRACTOR"** shall mean the party defined in the preamble hereto, whether corporation, firm or individual, or any combination thereof, and its, their or his\* successors, personal representatives, executors, administrators and assigns, and any person, firm or corporation who or which shall at any time be substituted in its place under this Contract.

**"CONTRACT DRAWINGS"** shall mean only those drawings specifically entitled as such and listed in the specifications or in any addendum, or any detailed drawings furnished by the Engineer, pertaining or supplemental thereto.

**"CONTRACT WORK"** shall mean everything required to be furnished and done by the Contractor by any of the parts of the Contract referred to in Article 1 hereof, except Extra Work as herein defined; it being understood that in case of any inconsistency in or between any part or parts of this Contract, the Engineer shall determine what shall prevail.

**"ENGINEER"** shall have the meaning set forth in Article 3 below.

**"EXTRA WORK"** shall mean work needed to complete the project that was not required by the Contract at time of its execution.

**"FINAL ACCEPTANCE"** shall mean acceptance by the City of the Work as evidenced by written approval of the Engineer.

**"LAW" or "LAWS"** shall mean the Constitutions of the United States and the State of New York, the Yonkers City Charter and Code, a statute of the United States or the State of New York, a local law of the City of Yonkers, and any ordinance, rule, regulation or judicial decision having the force of law.

**"MATERIALMAN"** shall mean any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor, or any Subcontractor to fabricate or deliver or who actually fabricates or delivers plant, materials or equipment to be incorporated in the work.

**“MEANS AND METHODS OF CONSTRUCTION”** shall mean the labor, materials in temporary structures, tools, plant and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by this Contract.

**“MATERIAL IN SHORT OR CRITICAL SUPPLY”** shall mean material, as determined by the City upon written application by the Contractor pursuant to the terms of the Contract, which is not generally available in a timely manner to permit completion of the work.

**“MATERIAL SPECIFICALLY FABRICATED”** shall mean material, as determined by the City upon written application by the Contractor pursuant to the terms of the Contract, which is not generally available as a standard item(s) without special fabrication.

**“OTHER CONTRACTORS”** shall mean any Contractor (other than the “Contractor” as defined herein or his Subcontractors) who has a contract with the City for work on or adjacent to the building or site of the work.

**“PROJECT”** shall mean the public improvement to which this Contract relates.

**“REQUIRED QUANTITY”** in a unit price Contract shall mean the actual quantity of any item of work or materials which is required in order to comply with the Contract.

**“SITE”** shall mean the area upon or in which the Contractor’s operations are carried on, and such other areas adjacent thereto as may be designated as such by the Engineer.

**“SPECIFICATIONS”** shall mean all of the directions, requirements and standards of performance applying to the work needed to complete the Project.

**“SUBCONTRACTOR”** shall mean any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or his Subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the Site.

**“THE WORK”** shall mean everything required to be furnished and done by the Contractor under the Contract and shall include both Contract Work and Extra Work.

### ARTICLE 3. POWERS OF THE CITY ENGINEER

- A. The City Engineer (hereinafter “Engineer”) or his designee shall be the representative of the City at the site and shall have the power, in the first instance, to inspect the performance of the work. The Engineer shall give all orders and directions contemplated under the Contract relative to the execution of the work. The Engineer shall have the power to supervise and control the performance of the work as contemplated under the Contract.
- B. The Engineer, in addition to those matters elsewhere herein delegated to the Engineer and expressly made subject to his determination, direction or approval, shall have the power:
- 1) To determine the amount, kind, quality, and location of the work to be paid for hereunder;
  - 2) To determine all questions in relation to the work, to interpret the Contract Drawings, Specifications and Addenda, and to resolve all inconsistencies or ambiguities therein;
  - 3) To determine how the work of this Contract shall be coordinated with work of other contractors engaged simultaneously on this project, including the power to suspend any part of the work, but not the whole thereof;
  - 4) To make changes in the work as the Engineer deems necessary, including the issuing of change orders for extra work, as designated in writing by the City through the Board of Contract and Supply;
  - 5) To omit Contract work whenever it deems it in the interest of the City to do so provided, however, such omitted work shall not be performed by another contractor during the life of this Contract;
  - 6) To amplify the Contract Drawings, add explanatory information and furnish additional specifications and drawings consistent with the intent of these Contract Documents;
- C. The foregoing enumeration shall not imply any limitation upon the power of the Engineer, for it is the intent of this Contract that all of the work shall generally be subject to his determination, direction and approval, except where the determination, direction or approval of someone other than the Engineer is expressly called for herein.

### ARTICLE 4. POWERS OF THE CITY BOARD OF CONTRACT AND SUPPLY (“BOCS”)

The Board of Contract and Supply of the City of Yonkers shall have the powers set forth in the City Code and as set forth herein. The Board of Contract and Supply in addition to those matters elsewhere herein expressly made subject to its determination, direction or approval, shall have the power:

- A. To approve the performance of change orders for extra work;
- B. To approve the use of all Subcontractors proposed by the Contractor;
- C. To hold the Contractor in default and/or to terminate the Contract; and,
- D. To approve the assignment of the Contract.

## ARTICLE 5. WORKMANSHIP AND MATERIALS

- A. The Contractor shall, in a good workmanlike manner, perform all the work required by the Contract within the time specified in the Contract to the satisfaction of the City.
- B. The Contractor shall provide, erect, maintain, and remove such construction, plant and temporary work as may be required. The Contractor shall be responsible for the safety, efficiency, and adequacy of the Contractor's plant, appliances and methods, and for damage which may result from failure or improper construction, maintenance or operation of said plant, appliances and methods.
- C. Contractor's Title to Materials
  - 1) No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that the Contractor has full, good and clear title to all materials and supplies used by the Contractor in the work, or resold to the City pursuant to the Contract free from all liens, claims or encumbrances.
  - 2) All materials, equipment and articles which become the property of the City shall be new unless specifically stated otherwise.
- D. "Or Equal" Clause
  - 1) Whenever a material, article or piece of equipment is identified on the plans or in the specification by reference to manufacturers' or vendors' names, trade names, catalogue number, or make, said identification is intended to establish a standard. Any materials, articles or equipment of other manufacturers and vendors which performs the same duties imposed by the general design may be considered equally acceptable provided that, in the opinion of the City, the material, article or equipment so proposed is of equal quality, substance and function and the Contractor shall not provide, or install any such proposed material, article or equipment without the prior written approval of the City.
  - 2) Where the City, pursuant to the provisions of this Article, approves a product proposed by the Contractor and the proposed product requires a revision or redesign of any part of the work, all such revisions and redesigns and all new drawings, and details required therefore shall be provided by the Contractor and shall be approved by the City. Where the City, pursuant to the provisions of this Article, approves a product proposed by the Contractor and the proposed product results in additional work or added costs, the Contractor proposing the product is solely responsible for such costs and added work.
- E. Quality, Quantity and Labeling
  - 1) The Contractor shall furnish materials and equipment of the quality and quantity specified in the Contract.
  - 2) When materials are specified to conform to any standard, the materials delivered to the Site shall bear manufacturer's labels stating that the materials meet such standards.
  - 3) The above requirements shall not restrict or affect the City's right to test materials as provided in the Contract.
- F. Payment for Concrete of Deficient Strength
  - 1) The Contractor recognizes the fact that the concrete mix specified was selected to yield concrete of desired strength and durability and the Contractor agrees that should he fail to supply concrete of the specified strength in the construction, that the deficiency in strength will result in construction of which the durability and useful life are impaired, and he further agrees that the City will suffer damages due to such impairment of durability and curtailment of useful life. Since the City will suffer by reason of such loss of durability and useful life, it is further agreed that the City will deduct and retain out of such moneys as may become due hereunder the amount determined in the manner as hereinafter set forth.
  - 2) The Contractor agrees that the strength of the concrete shall be determined by test cylinders made and tested in accordance with the specifications and he further agrees that said cylinders so made and tested give a reasonably satisfactory index of the strength of the concrete as incorporated in the construction. Such tests are to be paid for by the Contractor.
  - 3) The Contractor hereby agrees that the concrete mix proportions indicated in the specifications are for the Contractor's guidance only and they represent proportions which, in the experience of the City and other responsible public agencies, have given the strengths specified, using locally available sands and coarse aggregates and commercially available cements.
  - 4) Before the Contractor begins to manufacture concrete, he shall secure the Engineer's approval of the formula he proposes to use, and he shall certify such formula to the Engineer as yielding concrete of the desired strength, density and workability, but in no case shall the cement be less, nor the water/cement ratio more than that specified.
  - 5) He shall submit for this purpose a statement in writing of the sources of all ingredient materials, the type and brand of the cement, and the number of pounds of each of the materials in a saturated surface dry condition, making up one (1) cubic yard of concrete. The range of water/cement ratios within which the concrete will be manufactured and the method of mixing to be employed shall also be stated.
  - 6) The formula as finally approved shall not be changed without the written permission of the Engineer.

## ARTICLE 6. CONTRACTORS

### A. Superintendence by Contractor

- 1) The Contractor shall employ a full-time competent construction superintendent and necessary staff; the construction superintendent shall devote full time to the work and shall have full authority to act for the Contractor at all times.
- 2) If at any time the superintendent is not satisfactory to the City, the Contractor shall, if requested in writing by the City, replace said superintendent with another superintendent satisfactory to the City.

### B. Subsurface or Site Conditions Found Different

- 1) The Contractor acknowledges that the Contract consideration includes such provisions which the Contractor deems proper for all subsurface or site conditions the Contractor could reasonably anticipate encountering as indicated in the Contract, or borings, reports, rock cores foundation investigation reports, topographical maps or other information available to the Contractor or from the Contractor's inspection and examination of the site prior to submission of bids.
- 2) Should the Contractor encounter subsurface or site conditions at the site materially differing from those shown on or described in or indicated in the Contract, the Contractor shall immediately give notice to the Engineer of the differing conditions and shall not disturb the differing conditions until directed to do so by the City.

### C. Verifying Dimensions

- 1) The Contractor shall take all measurements at the site and shall verify all dimensions at the site before proceeding with the work. If said dimensions are found to be in conflict with the Contract, the Contractor immediately shall give notice to the City. The Contractor shall comply with any revised Contract Documents.
- 2) During the progress of work, the Contractor shall verify all field measurements prior to fabrication of building components or equipment, and proceed with the fabrication to meet field conditions.
- 3) The Contractor shall consult all Contract Documents to determine exact location of all work and verify spatial relationships of all work. Any question concerning location or spatial relationships may be submitted to the Engineer in a manner approved by the Engineer.
- 4) Special locations for equipment, pipelines, ductwork and other such items of work, where not dimensioned on plans, shall be determined in consultation with the Engineer.
- 5) The Contractor shall be responsible for the proper fitting of the Work in place.

### D. Meetings

The Contractor shall attend all scheduled progress meetings and any other special meetings as directed by the Engineer at no additional cost to the City.

### E. Related Work

The Contractor shall examine the Contract for related work to ascertain the relationship of said work to the Work under the Contract.

### F. Surveys and Layout

Unless otherwise expressly provided in the Contract, the City shall furnish the Contractor all surveys of the property necessary for the work. The Contractor shall be responsible for the layout of the work.

### G. Errors, Ambiguities or Discrepancies

The Contractor shall examine the Contract thoroughly before commencing the work and promptly report any errors, ambiguities or discrepancies to the City. Failure of the Contractor to do so shall result in a waiver of any claim by the Contractor based on such errors, ambiguities or discrepancies.

## ARTICLE 7. INSPECTION AND ACCEPTANCE

### A. Access to Work

The City shall at all times have access to the work and the Contractor shall maintain such access during the work on the project.

### B. Notice for Testing

If the Contract Documents, the City's instructions, laws, rules, ordinances, or regulations, require that any work be inspected or tested, the Contractor shall give the City timely notice of readiness of the work for inspection or testing and the date fixed for said inspections or testing.

### C. Reexamination of Work

Reexamination of any part of the work may be ordered by the City, and if so ordered the work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract, the City shall pay the cost of reexamination and if such work is not found to be in accordance with the Contract, the Contractor shall pay or be back-charged for the cost of reexamination and replacement.

D. Inspection of Work

- 1) All work, all materials whether or not incorporated in the work, all processes of manufacture, and all methods of construction shall be, at all times and places, subject to the inspection of the City, and the City shall judge the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which such work, materials, processes of manufacture and methods of construction are used. The City may direct that any work not approved by the City shall, at no cost to the City, be immediately removed, reconstructed, made good, replaced or corrected by the Contractor to the satisfaction of the City. This corrective work shall include all work of any third party destroyed or damaged by such removal or replacement. Rejected material shall be removed immediately from the site at no extra cost to the City. Acceptance of material and workmanship by the City shall not relieve the Contractor from the Contractor's obligation to replace all work which is not in full compliance with the Contract. The Contractor is to provide any assistance necessary, such as the erection of ladders or platforms, for the Engineer to conduct inspections of the work.
- 2) If after inspection the City determines that it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work, injured or not performed in accordance with the Contract, the compensation to be paid to the Contractor shall be reduced by an amount which, the City deems equitable.

E. Testing

All materials and equipment used in the work shall be subject to inspection and testing in accordance with accepted standards to establish conformance with specifications and suitability for uses intended, unless otherwise specified in the Contract. If any work shall be covered or concealed without the approval or consent of the City, that work shall, if directed by the City, be uncovered for examination. Any inspection by the City or by a testing laboratory on behalf of the City does not relieve the Contractor of the responsibility to maintain quality control of materials, equipment and installation to conform to the requirements of the Contract. If any test results are below accepted standards, the City may order additional testing. The cost of said additional testing, any additional professional services required, and any other expenses incurred by the City as a result of such additional testing, shall be paid by the Contractor.

F. Acceptance

No previous inspection shall relieve the Contractor of the obligation to perform the work in accordance with the Contract. No payment, either partial or full, by the City to the Contractor shall excuse any failure by the Contractor to comply fully with the Contract. The Contractor shall remedy all defects, and shall incur the cost of any damage to other work resulting there from.

G. Manufacturer's Guarantee

The Contractor shall secure from the manufacturers of all equipment and materials required under the Contract such manufacturer's standard warranties and guarantees (or such other warranties and guarantees as the specifications may require) in the name of the City of Yonkers and shall deliver the same to the City Engineer.

ARTICLE 8. PROTECTION OF WORK AND OF PERSONS AND PROPERTY; INDEMNIFICATION

- A. During performance and up to the date of final acceptance, the Contractor shall be under an absolute obligation to protect the finished and unfinished work against any damage, loss or injury; and, in the event of such damage, loss or injury he shall promptly replace or repair such work, whichever the City shall determine to be preferable. The obligation to deliver finished work in strict accordance with the Contract prior to final acceptance shall be absolute and shall not be affected by the City's approval of or failure to prohibit means and methods of construction used by the Contractor.
- B. During performance and up to the date of final acceptance, the Contractor must take all reasonable precautions to protect the persons and property of the City and of others from damage, loss or injury resulting from contractor's or subcontractor's performance under this Contract, except such property as the owners thereof may themselves be under legal duty to protect. The Contractor's obligation to protect shall include the duty to provide, place and adequately maintain at or about the site suitable and sufficient guards, lights, barricades and enclosures.
- C. Within three (3) days after notice to it of the happening of any such loss, damage or injury to work, persons or property, or accidents, the Contractor shall make a full and complete report thereof, in writing to the City. The Contractor shall notify the City, in writing, of any loss, damage or injury to work, persons of property, or any accidents on the site within twenty-four (24) hours of the occurrence.
- D. If the persons or property of the City or of others sustain loss, damage or injury resulting from the Contractor's, or its Subcontractor's performance of this Contract, or from its or their failure to comply with any of the provisions of this Contract or of law or out of its or their negligent acts or omissions, the Contractor shall defend and indemnify and hold the City, its officers, employees and agents, harmless from any and all claims and judgments for loss, damages or injuries and from costs and expenses include attorneys fees to which the City may be subjected or which may suffer or incur by reason thereof.
- E. The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against the Contractor, or the City.

- F. The Contractor shall protect all adjoining property and shall repair or replace any property damaged or destroyed during the progress of the Work at no cost to the City.
- G. Construction Site Emergency
- A construction site emergency is defined as an unforeseen condition or event requiring prompt action by the Contractor. Construction site emergencies include, but are not limited to, construction related accidents; uncontrolled release of asbestos, lead dust or other hazardous materials; natural disasters; automobile accidents; floods and fire
- The Contractor must notify the City of a construction site emergency, within a half-hour of the occurrence of the event, in accordance with the following:
- 1) If the emergency occurs during regular business hours the Contractor must notify the Engineer and call the City's Action Center at (914) 377-4357, or
  - 2) During non-business hours the emergency shall be reported by the Contractor to the City Action Center at (914) 377-4357 and to the Yonkers Police Department through 911; and shall also be reported to the Engineer at the earliest opportunity.

#### ARTICLE 9. COMMENCEMENT AND PROSECUTION OF THE WORK

The Contractor must commence work within ten (10) days after the date specified in a written Notice to Proceed signed by the City. The time for performance of the work under the Contract shall be computed from such date specified on the Notice to Proceed.

#### ARTICLE 10. PROGRESS SCHEDULE

- A. To enable the work to be laid out and performed in an orderly and expeditious manner, the Contractor, within fifteen (15) days after the date of the Notice of Award of this Contract, unless otherwise directed by the Engineer, shall submit to the Engineer a proposed progress schedule, showing:
- 1) The anticipated time of commencement and completion of each of the various operations to be performed under this Contract; and
  - 2) The sequence and interrelation of each of these operations with the others and with those of other related Contracts; and
  - 3) The estimated time required for fabrication or delivery, or both, of all materials and equipment required for the work.
- B. The proposed schedule shall be revised as directed by the Engineer, until finally approved by him, and after such approval, shall be strictly adhered to by the Contractor.

#### ARTICLE 11. TIME OF COMPLETION; LIQUIDATED DAMAGES

- A. The work shall commence as specified in the Notice to Proceed and shall be completed within the time of completion specified in Schedule "A" to this General Agreement.
- B. The date of commencement and the time for completion, as specified in the Contract, are essential conditions of the Contract.
- C. The Contractor shall perform the work regularly, diligently, and without interruption at such rate of progress as to insure timely completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing at the site.
- D. Should the contractor fail to timely commence or perform any work, or otherwise fail to timely carry out any directions consistent with the terms of the contract after written notice from the City, the City may have such work done or materials furnished by others and deduct the cost thereof from the monies due, or to become due under the Contract.
- E. If the Contractor shall fail to complete the work within the time specified, or any proper extension thereof the Contractor shall pay to the City, as a partial consideration for the Contract, the amount specified in the Contract as set forth in Schedule "A" to this General Agreement, not as a penalty, but as liquidated damages for breach of contract, for each and every calendar day that the Contractor shall be in default.
- F. The amount of liquidated damages is agreed upon by and between the Contractor and the City as set forth in Schedule "A" to this General Agreement because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages which the City would sustain in said event and such amount is agreed to be in the amount of damages which the City or its beneficiaries would sustain and said amount shall be retained by the City.
- G. In the event the Contractor shall fail to complete the work within the time fixed for such completion in Schedule "A" to this General Agreement, plus authorized time extensions, or if the Contractor, in the sole determination of the City, has abandoned the work, the Contractor must pay to the City the sum fixed in the Schedule "A" to this General Agreement, for each and every calendar day that the time consumed in completing the work exceeds the time allowed therefore.

- H. Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification under Article 12, or the Contractor's obligation to otherwise indemnify the City, or to any other remedy provided for by Contract or by law.
- I. The City will deduct and retain out of the moneys which may become due hereunder, the amount of such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference upon demand by the City.
- J. Time is of the essence for each and every portion of the work. In any instance in which additional time is allowed for completion, the new time of completion established by the relevant change order shall be of the essence. The Contractor shall not be charged with liquidated damages or any excess cost if the Engineer determines in writing that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the City. In any event, the Contractor shall not be charged with liquidated damages or any excess cost if the delay in completion is due to an unforeseeable cause beyond the control and without the fault of, or negligence of the Contractor, and approved by the City, including, but not limited to Acts of God or of public enemy, acts of the City, epidemics, quarantine, restrictions, strikes, freight embargoes and unusually severe weather.
- K. The time for completion can only be extended by change order pursuant to Article 19 and may be extended for all the work, or only that portion of the work altered by the change order.
- L. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or its subcontractors or material men, and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.
- M. Permitting the Contractor to continue with the work after the time for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Contractor after such time, shall in no way operate as a waiver on the part of the City of any of its rights under this Contract.
- N. Application for Extension of Time
- 1) Before a change order for the time extension request may be approved, the Contractor must, within five (5) days after commencement of the condition which allegedly has caused or is causing the delay, submit a written application to the Engineer identifying:
    - a) the Contractor, the Contract number, and project description;
    - b) liquidated damages assessment rate, as specified in the Contract;
    - c) original bid amount;
    - d) the original Contract start date and completion date;
    - e) any previous time extensions granted (number and duration); and
    - f) the extension of time requested.
  - 2) In addition, the application for extension of time shall set forth in detail:
    - a) the nature of each alleged cause of delay in completing the work;
    - b) the date upon which each such cause of delay began and ended and the number of days attributable to each such cause;
    - c) a statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive, and
    - d) a statement indicating the Contractor's understanding that the time extension is granted only for the purpose of permitting continuation of Contract performance and payment for work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.
- O. Notwithstanding the procedures set forth in this Article, the Engineer in his discretion can grant a one-time extension, in writing, not to exceed 30 days.

#### ARTICLE 12. COORDINATION WITH OTHER CONTRACTORS

- A. During the process of the work, other contractors may be engaged in performing other work or may be awarded other Contracts for additional work on this project. In that event, the Contractor shall coordinate the work to be done hereunder with the work of such other contractors and the Contractor shall fully cooperate with such other contractors and carefully fit its own work to that provided under other contracts as may be directed by the Engineer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor.
- B. If the Engineer shall determine that the Contractor is failing to coordinate his work with the work of the other contractors as the Engineer directed, then the City shall have the right to withhold any payments otherwise due hereunder until the Contractor completely complies with the Engineer's directions.
- C. If the Contractor notifies the Engineer in writing that another contractor on this project is failing to coordinate his work with the work of this Contract as directed, the Engineer must promptly investigate the charge. If the Engineer finds it to be true,

he must promptly issue such directions to the other contractor with respect thereto as the situation may require. The City shall not, however, be liable for any damages suffered by the Contractor by reason of the other contractor's failure to promptly comply with the directions so issued by the Engineer, or by reason of another contractor's default in performance, it being understood that the City does not guarantee the responsibility or continued efficiency of any contractor.

- D. The Contractor shall indemnify and hold the City harmless from any and all claims of judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason of the Contractor's failure to comply with the Engineer's directions promptly; and the City shall have the right to exercise the powers reserved herein with respect to any claims which may be made for damages due to the Contractor's failure to comply with the Engineer's direction promptly.
- E. Should the Contractor sustain any damage through any act or omission of any other contractor having a contract with the City for the performance of work upon the site or of work which may be necessary to be performed for the proper execution of the work to be performed hereunder, or through any act or omission of a subcontractor of such Contract, the Contractor shall have no claim against the City for such damage.
- F. Should any other contractor having, or who shall hereafter have, a contract with the City for the performance of work upon the site sustain any damage through any act or omission of the Contractor hereunder or through any act or omission of any subcontractor of the Contractor, the Contractor agrees to reimburse such other contractor for all such damages and to defend at his own expense any suit based upon such claim and if any judgment or claims against the City shall be allowed, the Contractor shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith and shall indemnify and hold the City harmless from all such claims.
- G. The City's right to indemnification hereunder shall in no way be diminished, waived or discharged, by its recourse to assessment of liquidated damages provided in this General Agreement, or by the exercise of any other remedy provided for by law.

#### ARTICLE 13. NO DAMAGE FOR DELAY

The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, and agrees that any such claim may be fully compensated for by an extension of time to complete performance of the work as provided herein.

#### ARTICLE 14. OCCUPATION OR USE PRIOR TO COMPLETION

If, before the final completion of all the work contemplated herein, it shall be deemed necessary by the City to take over, use, occupy or operate any part of the completed or partly completed work, the City shall have the right to do so and the Contractor will not in any way interfere with or object to the use, occupation or operation of such work by the City after receipt of notice in writing that such work or part thereof will be used by the City on and after the date specified in such notice. Should such action be taken by the City, the Contractor's guarantee on that part of the work placed into use shall begin on the date such use by the City shall begin (and the Contractor shall be entitled to a return of so much of the retained percentages as have been withheld by the City, as security for the faithful performance of the work which the City may take over, use, occupy or operate under this Article, except so much thereof as may be retained under Article 18 hereof). Immediately prior to such occupancy or use, inspection of the part to be occupied or used will be made by the Engineer, and the Contractor will be furnished in writing with a statement of the work, if any, still to be done on such part.

#### ARTICLE 15. SUBCONTRACTS

- A. The Contractor shall not make subcontracts totaling in amount more than the percentage specified in the Schedule "A" of this General Agreement of the total Contract price without special written permission from the Board of Contract and Supply.
- B. Before making any subcontracts, the Contractor must submit a written statement to the Engineer giving the name and address of the proposed Subcontractor, the portion of the work and materials which he is to perform and furnish, the cost of the subcontract and any other information tending to prove that the proposed Subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this Contract. All Subcontractors must be approved by the Board of Contract and Supply.
- C. If an approved Subcontractor elects to subcontract any portion of his subcontract, the proposed sub-subcontract shall be submitted in the same manner as directed above. Wherever the word Subcontractor appears herein, it also means sub-subcontractor.
- D. The proposed Subcontract will be submitted to the Board of Contract and Supply for approval at the next regularly scheduled meeting. The City will notify the Contractor as soon as possible after the Board of Contract and Supply acts whether the proposed Subcontractor is approved. If the proposed Subcontractor is not approved, the Contractor may thereupon submit another proposed Subcontractor unless he decides to do the work himself.

- E. The City's approval of a Subcontractor shall not relieve the Contractor of any of his responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible to the City for the acts or defaults of his Subcontractor and of such Subcontractor's officers, agents and employees, each of who shall, for this purpose, be deemed the agent or employee of the Contractor to the extent of his Subcontract.
- F. No Subcontractor shall be permitted on the site unless he is approved, nor shall any Subcontractor be permitted to perform work at the site unless he has furnished satisfactory evidence of insurance covering Workmen's Compensation, Public Liability and Property Damages as required. Acceptable indication of such insurance is being a named insured on the Contractor's insurance.
- G. The Contractor shall promptly, upon request, file with the Engineer a confirmed copy of the Subcontract, with cost of Subcontract.
- H. Before entering into any Subcontract hereunder, the Contractor shall inform the Subcontractor fully and completely of all provisions and requirements of this Contract relating either directly or indirectly to the work to be performed and the materials to be furnished under such Subcontract, and every such Subcontract shall expressly stipulate that all labor performed and materials furnished thereunder shall strictly comply with the requirements of this Contract.
- I. The Contractor shall require all agreements with or between Subcontractors to be in writing. Every Subcontract shall provide expressly that such Subcontract (and all rights of any Subcontractor thereunder) is subject in all respects whatsoever to all requirements of this Contract and that all work under the Subcontract shall comply with all requirements of this Contract. Each Subcontract shall include a provision authorizing termination for necessity or convenience by the Contractor and a provision under which the Subcontractor agrees that the Subcontractor's obligations shall be assigned to the City, at the City's election, upon a termination of Contractor's rights to perform the Contract. Each Subcontract shall contain the same terms and conditions as to method of payment for work, and as to retained percentages, as are set forth in this Contract; and Contractor shall pay each Subcontractor in accordance with the terms of the applicable subcontract for work performed by Subcontractor.
- J. The Contractor's execution of any Subcontract shall be deemed a representation to the City that the Contractor (1) has informed the Subcontractor fully and completely of all requirements of this Contract relating directly or indirectly to the Subcontractor's Work and (2) has taken all steps necessary to ensure that each and every Subcontractor meets the minimum qualifications required by the City of any Contractor submitting bids for any City work.

#### ARTICLE 16. ASSIGNMENTS

The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract; or his right to execute it, or his right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the moneys due or to become due under this Contract, unless the previous written consent of the Board of Contract and Supply shall first be obtained thereto, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments.

Failure to obtain the previous written consent of the City to such an assignment, transfer or conveyance, shall justify the City's revocation and annulment of this Contract. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, his assignees or transferees, and all moneys previously earned and unpaid under the Contract shall be forfeited to the City except so much thereof as may be necessary to pay the Contractor's employees.

#### ARTICLE 17. INSURANCE

During performance and up to the date of final acceptance, the Contractor must effect and maintain insurance of the kind and at the limits set forth in Schedule "A" to this General Agreement.

#### ARTICLE 18. MAINTENANCE AND GUARANTY; REPLACEMENT OF DEFECTIVE WORK

- A. The Contractor must promptly repair, replace, restore or rebuild, as the Engineer may determine, any finished work in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one year period subsequent to the date of final acceptance except where other periods of maintenance and guarantee are provided for.
- B. As security for the faithful performance of his obligation hereunder, the Contractor, upon filing his requisition for final payment, shall deposit with the City, a sum equal to one (1) percent of the Contract price (or such other amount fixed in Schedule "A" to this General Agreement in cash or certified check upon a State or National Bank and Trust Company or a check of such Bank and Trust Company signed by a duly authorized officer thereof and drawn to the order of the City.
- C. In lieu of the above the Contractor may make such security payment to the City by authorizing the City in writing to deduct the amount from the final payment which shall be deemed the deposit required above.
- D. If the Contractor has faithfully performed all his obligations hereunder, the sum shall be repaid to the Contractor without interest within thirty (30) days after the City determines the Contractor has faithfully performed all his obligations hereunder.

- E. Notice by the City to the Contractor to repair, replace rebuild or restore such defective or damaged work shall be timely if given not later than ten (10) days subsequent to the expiration of the one (1) year period or other periods provided for in Schedule "A" to this General Agreement.
- F. If the Contractor shall fail to repair, replace, rebuild or restore such defective or damaged work promptly after receiving such notice, the City shall have the right to have the work done by others in the same manner as provided for in Article 40 hereof and to deduct the cost thereof from the amount as deposited hereunder. The balance, if any, shall be returned to the Contractor without interest.
- G. Should the amount so deposited be insufficient to cover the cost of such work, the Contractor shall be liable to pay such deficiency on demand by the City.
- H. The Engineer's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective work when performed by one(s) other than the Contractor shall be binding and conclusive as to the amount thereof upon the Contractor.

#### ARTICLE 19. CONTRACT CHANGES

- A. Changes may be made to this Contract only as duly authorized by the City through its Board of Contract and Supply. Contractors deviating from the requirements of an original contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk. All such changes, modifications and amendments will become a part of the original contract. Any work so ordered must be performed by the Contractor.
- B. Contract changes will be made only for work necessary to complete the work included in the scope of the Contract, and for non-material changes to the scope of the Contract. Contract changes may include any contract revision deemed necessary by the City.
- C. The Contractor shall be entitled to a price adjustment for extra work performed pursuant to a written change order. If any part of the Contract is necessarily delayed by a change order, the Contractor may request, subject to Board of Contract and Supply approval, an extension of time for performance. Adjustments to price shall be computed in one or more of the following ways: (i) by agreement of a fixed price; (ii) by unit prices specified in the contract subject to the limitations herein; (iii) by time and material record; and/or (iv) in any other manner approved by the City.
- D. Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification by audit. If the audit reveals that the Contractor's costs for change order work were inaccurately stated during negotiations, the City shall recoup the amount by which the costs were inaccurately stated, plus any costs incurred by the City to conduct the audit, by proportionately reducing the price of the change order. This remedy is not exclusive and is in addition to all other rights and remedies of the City.

#### ARTICLE 20. METHODS OF PAYMENT FOR EXTRA WORK

- A. Extra work for which there are applicable Contract unit prices will be paid for at such unit prices subject to the limitations set forth herein. Where there are no applicable Contract unit prices, subject to audit by the City, the price to be paid for extra work ordered by the City, and performed by the Contractor with his own forces, shall be the reasonable cost of:
  - 1) Necessary materials (including transportation to the site); plus
  - 2) Necessary direct labor; plus
  - 3) All additional insurance required by reason of the performance of the extra work; plus
  - 4) Payments required to be made to labor organizations under existing labor agreements; plus
  - 5) Maintenance, operation, and rental of, or reasonable rental value of Contractor owned, necessary plant and equipment other than small tools (including gas, oil, coal, electric current, etc); plus
  - 6) Necessary installation and dismantling of such plant and equipment (including transportation to and from the site), if any items; plus
  - 7) Ten (10) percent of the total of Items 1 through 6 as compensation for all other items of cost or expense including administration, overhead, general superintendence, and small tools; plus
  - 8) Ten (10) percent of the total of Items 1 through 7 as compensation for profit, except that no percentage for overhead and profit will be allowed on payroll taxes or on the premium portion of overtime pay.
- B. Where there are no applicable unit prices for extra work ordered by the City and performed in whole or in part by other than the Contractor's own forces, the Contractor shall be paid, subject to audit by the City, only the actual and reasonable cost of such subcontracted work computed as outlined above, plus an additional allowance of five (5) percent to cover the Contractor's profit, superintendence, administration, insurance, and other overhead.
- C. Where a change is ordered, involving both extra work and omitted or reduced contract work, the contract price shall be adjusted, subject to audit by the City, in an amount based on the difference between the value of such extra work and of the work omitted or reduced. The cost of such extra work and of such omitted or reduced work shall be computed in accordance with Items 1 through 6 of this Article. If the cost of such work exceeds the cost of the work omitted or reduced, the contract

price shall be increased by the difference, plus ten (10) percent thereof, as compensation for all other items of cost or expense including administration, overhead, superintendence, and small tools, plus an additional ten (10) percent of the total thereof as compensation for profit. If the cost of work omitted or reduced exceeds the cost of such extra work, then the contract price shall be reduced by such differences.

- D. Where the Contractor and the City can agree upon another method of payment for extra work, or for extra work ordered in connection with omitted or reduced work, such method, may, at the option of the City, be substituted for the cost plus a percentage method. However, if the work is performed by a Subcontractor, the Contractor shall not be entitled to receive more than an additional allowance of five (5) percent over and above the actual and reasonable cost of such Subcontractor's work.
- E. Unit Price Contracts
- 1) In Unit Price Contracts if during the progress of work, the actual quantity of items required to complete the work of any unit item approaches the estimated quantity, and due to errors, site conditions, changes in design or any other reason, it appears that the actual quantity necessary to complete the work will exceed the estimated quantity by 25 percent, the Contractor shall immediately notify the Engineer of such anticipated overruns.
  - 2) Contractors are warned that the Engineer's estimate of quantities on the various items of work and materials is approximate only, given solely to be used as a uniform basis for the comparison of bids, and is not to be considered part of this Contract. The quantities actually required to complete the Contract work may be less or more than so estimated, and if so, no action for damages or for loss of profits shall accrue to the Contractor by reason thereof.
  - 3) The Contractor shall not be compensated for work performed in excess of one hundred twenty five (125) percent of the estimated quantities in the bid schedule without written authorization of the Engineer.
  - 4) The Contractor will be paid at the unit price bid for quantities up to one hundred and twenty five (125) percent of the estimated quantities listed in the bid schedule. If quantities on any item exceed one hundred and twenty five (125) percent of the estimate, the City reserves the right and the Contractor agrees to renegotiate the unit price bid to a new unit price for such quantities. If the City and Contractor cannot agree to a new price then the City, if it requires additional units of the item, shall order the Contractor and the Contractor agrees to perform the additional work on a time and material basis established herein. In no event will the cost exceed the bid price.
- F. The Contractor shall furnish satisfactory invoices, payrolls and vouchers covering all items of cost relating to the Extra Work and when requested by the City shall give the City access to accounts and records relating thereto.

## ARTICLE 21. DISPUTES

### Claims for Extra Work

- A. If the Contractor claims that (i) any work which the Contractor has been ordered to perform will be Extra Work, (ii) the Contractor for any reason cannot comply with the terms and provisions of the Contract, or (iii) any action or omission of the City is contrary to the terms and provisions of the Contract and will require the Contractor to perform Extra Work the Contractor shall:
- 1) Promptly comply with the City's direction to perform the work which the Contractor claims will be Extra Work.
  - 2) File with the City a notice of the basis of the Contractor's claim and request for a determination thereof, within seven (7) working days:
    - a) after being ordered to perform the work claimed by the Contractor to be Extra Work; or
    - b) after commencing performance of the work, whichever date shall be earlier; or
    - c) after the said action or omission on the part of the City occurred.
  - 3) Proceed diligently, pending and subsequent to the determination of the City with respect to any said disputed matter, with the performance of the work in accordance with all instructions of the City.
- B. No claim for Extra Work shall be allowed unless the same was done pursuant to a written order of the City. The Contractor's failure to comply with any parts of this Article shall be deemed to be:
- 1) a conclusive and binding determination on the part of the Contractor that said order, work, action or omission does not involve Extra Work and is not contrary to the terms and provisions of the Contract.
  - 2) a waiver by the Contractor of all claims for additional compensation or damages as a result of said order, work, action or omission.
- C. The value of claims for Extra Work, if allowed, shall be determined by the methods described in the Contract.

### Compliance with the Contract

- D. In addition to the statements required under Article 22 hereof, or under this Article, the Contractor and his Subcontractor shall, upon notice from the City, produce for examination at the Contractor's or Subcontractor's office, by the representatives of the City, all his books of accounts, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books and canceled checks, showing all of his acts and transactions in connection with or relating to or arising by reason of this Contract, and submit himself and persons in his employment, for examination under oath by any

person designated by the City to investigate claims made against the City under this Contract. At such examination a duly authorized representative of the contractor may be present.

- E. Unless such statements shall be made and filed within a timely manner and such records submitted for examination and the Contractor and his employees submit themselves for examinations as aforesaid, the City shall be released from all claims arising under, relating to or by reason of this Contract, except for the sum certified by the City to be due under the provisions of this Contract. It is further stipulated and agreed that no person has power to waive any of the foregoing provisions, and that in any action against the City to recover any sum in excess of the sums certified by the City to be due under or by reason of this Contract, the Contractor must allege in his complaint and prove, at the trial, compliance with the provisions of this section.
- F. In addition to the foregoing, after the commencement of any action by the Contractor arising under or by reason of this Contract, the City shall also have the right by its attorney, upon written notice from said attorney, to require the Contractor to produce for examination under oath by said attorney the above described books and documents of the Contractor and to submit himself and persons in his employ for examination under oath by said attorney.
- G. Unless the Contractor submits said records, himself and his employees for examination by the said attorney as aforesaid, the action of the Contractor shall be dismissed.

#### ARTICLE 22. PERFORMANCE OF EXTRA OR DISPUTED WORK

- A. While the Contractor or his Subcontractor is performing extra work ordered by the City under Article 19 hereof (unless payment therefore is to be made by a lump sum or at unit prices previously agreed upon) or is performing disputed work or complying with a determination or order under protest in accordance with Article 21 hereof, in each such case the Contractor shall furnish the Engineer daily with three (3) copies of written statements signed by the Contractor's representatives at the site showing:
  - 1) The name and home telephone number of each worker employed on such work or engaged in complying with such determination or order, the number of hours employed thereon, and the character of the work each is doing; and
  - 2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work or compliance with such determination or order, and from whom purchased or rented.
- B. A copy of such statement will be countersigned by the Engineer, noting thereon any items not agreed to or questioned, and be returned to the Contractor within two (2) days after submission. The Contractor and his Subcontractors, when required by the City, must also produce for inspection, at the office of the Contractor or Subcontractor, any and all of his books, vouchers, records, daily job diaries and reports, and canceled checks, showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such work or in complying with such determination or order, and the amounts expended therefore, and must permit the City to make such extracts there from or copies thereof as the City may desire.
- C. Failure to comply strictly with these requirements shall constitute a waiver of any claims for extra compensation or damages on account of the performance of such work or compliance with such determination or order.

#### ARTICLE 23. OMITTED WORK

If any Contract work in a lump sum Contract, or if any part of a lump sum item in a unit price Contract, is omitted by the City, the Contract price shall be reduced by an amount equal to the estimated cost of such omitted work, computed in accordance with Items 1 through 6 of subpart A of Article 20, unless the Contractor and City can agree upon another method of fixing the value of such omitted work. If any Contract work in a unit price Contract, whether the whole of a lump sum item or units of any other item, is so omitted, no payment will be made therefore.

#### ARTICLE 24. NO ESTOPPEL

Neither the City nor any department, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Contract by the City, the Engineer, or any other officer, agent or employee of the City, either before or after the final completion and acceptance of the work and payment therefore:

- A. From showing the true and correct classification, amount, quality or character of the work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the work or any part thereof does not in fact conform to the requirements of this Contract; and
- B. From demanding and recovering from the Contractor any overpayment made to him, or such damages as he may sustain by reason of his failure to perform each and every part of this Contract in strict accordance with its terms, or both.

#### ARTICLE 25. WAIVER, MODIFICATION AND APPROPRIATIONS

- A. Waiver: Waiver by the City of a breach of any provision of this Contract shall not be deemed to be a waiver of any subsequent breach and shall not be construed to be a modification of terms of the Contract unless and until the same shall be agreed to in writing by the City as required herein.
- B. Modification: This Contract may be modified by the parties in writing in a manner not materially affecting the substance hereof. It may not be altered or modified orally.
- C. Appropriations: This Contract shall be deemed executory only to the extent of the moneys appropriated and available for the purpose of the Contract, and no liability on account thereof shall be incurred by the Contractor beyond the amount of such moneys. It is understood that neither this Contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available moneys for the purpose of the Contract.

#### ARTICLE 26. PARTIAL PAYMENTS

- A. The City may make a partial payment to the Contractor on the basis of an approved estimate of the work performed during each preceding business month. The City shall retain five percent (5%) of the amount of each estimate.
- B. As a condition precedent to payment, on a monthly basis in accordance with the agreement of the City, the Contractor shall submit a Request for Payment in a form acceptable to the Engineer and City Finance Commissioner. The City shall make all monthly partial payments based on the Engineer's review and approval of the Request for Payment form. Any partial payment made pursuant to the Request for Payment shall not be construed to signify acceptance of partially completed work or as a waiver of the right of the City to require the fulfillment of all the terms of the Contract.
- C. In preparing estimates for partial payment, material delivered to the site, and properly stored and secured at the site, material in short or critical supply or material specially fabricated and other material approved to be stored off-site under such conditions as the City shall prescribe may be taken into consideration. Unless otherwise provided by the City the conditions for payment of material stored off-site shall include but not be limited to the following: (a) the material shall be properly stored in a secured location approved by the City; (b) the material will be covered under the City's builder's risk policy, if any, subject to all policy limits and restrictions; and, (c) the material may be inspected by the City to assure compliance with project specifications. In order to seek payment pursuant to this Article, the Contractor must by, a date approved by the Engineer, submit a list to the City of the material in short or critical supply, material specially fabricated for the work at the site, or material which for any other reason must be stored off-site; such list must be accompanied by a detailed backup substantiating the Contractor's position that it is material in short or critical supply, or material specially fabricated for work at the site and/or must be stored off-site. All costs related to the storage of materials, or material in short or critical supply or material specifically fabricated for the work at the site are the sole responsibility of the Contractor. In addition to the above, the Contractor must demonstrate that the material stored either at the site or off-Site has been paid for in full by the Contractor, and upon partial payment by the City becomes the sole property of the City.

#### ARTICLE 27. CONTRACTOR'S PAYMENT TO SUBCONTRACTORS

- A. The Contractor shall make prompt payment to the Subcontractors within fifteen (15) calendar days of the receipt of any payment from the City. The Contractor shall pay to each such Subcontractor that portion of the proceeds of such payment representing the value of the work performed by such Subcontractor, based upon the actual value of the subcontract, which has been approved and paid for by the City, less an amount necessary to satisfy any claims, liens, or judgments against such Subcontractor which have not been suitably discharged and less any amount retained by the Contractor as provided herein. For such purpose, the subcontract may provide that the Contractor may retain not more than five percent (5%) of each payment to such Subcontractor or not more than ten percent (10%) of each such payment if prior to entering into the subcontract such Subcontractor is unable or unwilling to provide, at the request of the Contractor, a performance bond and a labor and material bond both in the amount of the subcontract. Contractor warrants and represents that it will execute such certificate or statements as the City may require to prove compliance with this provision.
- B. Nothing herein shall relieve the Contractor from its obligation to complete the work, nor shall anything herein create any relationship in contract or otherwise, implied or expressed, between any Subcontractor and the City.

#### ARTICLE 28. FINAL PAYMENT

- A. As a condition precedent to receiving final payment for all work, the Contractor shall submit all required certificates and documents, together with a final requisition for the balance claimed to be due under the Contract, less any amount authorized to be retained for maintenance subsequent to final acceptance.
- B. Verified Statement of Claims: The Contractor must also submit with the final requisition a final verified statement of any and all alleged claims against the City, in any way connected with or arising out of this Contract (including those as to which details may have been furnished pursuant to Articles 8 and 21 hereof) setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item. With

reference to each such claim, the City shall have the same right to inspect, and to make extracts or copies of, the Contractor's books, vouchers, records, etc., as is referred to in Articles 21 and 22 hereof. Nothing contained in this Article is intended to or shall relieve the Contractor from the obligation of giving timely notice of claims pursuant to Articles 21 and 22 hereof. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor upon acceptance of the final payment, pursuant to Article 29 hereof, will have waived any such claims.

- C. **Preparation of Final Voucher:** After receiving the notices required under Sections A and B herein, the Engineer will promptly make a final inspection. If, upon inspection, the Engineer determines that no further work is necessary, the Engineer will prepare and certify, subject to the approval of the Board of Contract and Supply, a voucher for final payment less any and all deductions authorized to be made under this Contract or by law. Payment pursuant to such final voucher, less any deductions authorized to be made under this Contract or by law, shall constitute final acceptance and final payment, and shall be made by the City within thirty (30) days after approval of the Board of Contract and Supply.

#### ARTICLE 29. ACCEPTANCE OF FINAL PAYMENTS

- A. The acceptance by the Contractor, or by anyone claiming by or through it, of the final payment, whether such payment be made pursuant to any judgment of any court, or otherwise, shall constitute and operate as a release to the City from any and all claims of, and liability to, the Contractor for anything heretofore done or furnished for or relating to or arising out of this Contract and the work done hereunder, and for any prior act, neglect or default on the part of the City or any of its officers, agents, or employees, excepting only a claim against the City for the amounts deducted or retained in accordance with the terms and provisions of this Contract or by law, and excepting a claim, not otherwise waived, which is contained in the verified statement filed with the Contractor's final requisition pursuant to Article 28 hereof.
- B. The Contractor is warned that the execution by him of a release, in connection with the acceptance of the final payment, containing language pertaining to reserve claims other than those herein specifically excepted from the operation of this Article, or those for amounts deducted by the City, shall not be effective to reserve such claims, anything stated to the Contractor orally or in writing by any officer, agent or employee of the City to the contrary notwithstanding.
- C. Should the Contractor refuse to accept the final payment as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.
- D. The Contractor, prior to commencing an action for breach of Contract must serve a detailed and verified statement of claim upon the City's Corporation Counsel not later than forty (40) days after the acceptance of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

#### ARTICLE 30. LIENS

Upon receipt of a lien, the City shall send Notice to the Contractor stating that a sum which shall be one and one-half (1 ½) times the amount stated to be due in the notice of lien shall be deducted from payments due the Contractor. This sum shall be withheld until the lien is discharged.

#### ARTICLE 31. WITHHOLDING OF PAYMENTS

- A. The City may withhold from the Contractor any part of any payment as may, in the judgment of the City, be necessary:
- 1) to assure payment of just claims of any persons supplying labor or materials for the work;
  - 2) to protect the City from loss due to defective work not remedied; or
  - 3) to protect the City from loss due to injury to persons or damage to the work or property of others caused by the act or neglect of the Contractor. The City shall have the right to apply any amount so withheld, in such manner, as the City may deem proper to satisfy claims or to secure protection. Such application of the money shall be deemed payments for the account of the Contractor.
- B. The provisions of this Article are solely for the benefit of the City and any action or non-action hereunder by the City shall not give rise to any liability on the part of the City.

#### ARTICLE 32. EMPLOYEES

- A. The Contractor and its subcontractors shall not employ on the Contract work:
- 1) Anyone who is not competent, faithful and skilled in the work for which he or she shall be employed; and whenever the City shall inform the Contractor, in writing, that any employee is, in the City's opinion, incompetent, unfaithful, or disobedient, he shall be discharged from the work forthwith, and shall not again be employed upon it; or
  - 2) Any labor, materials or means whose employment, or utilization during the course of this Contract, may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of work or similar troubles by workers employed by the Contractor his Subcontractors, or by any of the trades working in or about the buildings and premises where work is being performed under this Contract, or by other Contractors or their Subcontractors pursuant to other Contracts, or on any other buildings or premises owned or operated by the City of Yonkers, its

agencies, departments, boards or authorities. Any violation by the Contractor of this requirement may be considered as proper and sufficient cause for declaring the Contractor to be in default; or

- 3) In accordance with Section 220 (3-e) of the Labor Law, the Contractor and his Subcontractors shall not employ on the work any apprentice unless he is registered individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above shall be paid the wage rate determined by the classification of work he actually performed. The Contractor or Subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as all the appropriate ratios and wage rates, for the area of the construction prior to using any apprentices on the Contract work.

#### ARTICLE 33. AFFIRMATIVE ACTION POLICIES; EMPLOYER AND PROFESSIONAL RESPONSIBILITIES

- A. Affirmative Action: The Contractor shall comply with, and assist the City in implementing, all affirmative action policies set forth in the Contract as well as any such policies or regulations which may be issued or amended by the City from time to time, and all requirements under applicable Federal, State and Municipal statutes, and any applicable regulations thereunder, relating to equal employment opportunities for all individuals.
- B. Employer Responsibilities: The Contractor shall comply with the provisions of all applicable State and Municipal requirements and with all State and Federal laws applicable to the Contractor as an employer of labor or otherwise as well as any labor provisions set forth in this Contract.
- C. Professional Status Requirements: The Contractor shall comply, at its own expense, with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, Subcontractors and others employed to undertake and complete the work hereunder.

#### ARTICLE 34. LABOR LAW PROVISIONS

- A. The Contractor agrees, as required by Labor Law Sections 220 and 220-d, as amended, that:
  - 1) no laborer, worker or mechanic in the employ of the Contractor or any Subcontractor employed by the Contractor in the performance of this Contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar day or more than five (5) days in any one week except in cases of extraordinary emergency, as defined in the Labor Law;
  - 2) the wages paid for a legal day's work to each laborer, worker or mechanic employed by the Contractor or any Subcontractor in the performance of this Contract shall not be less than the prevailing rate of wages as defined by law;
  - 3) each laborer, worker or mechanic employed by the Contractor or any Subcontractor in the performance of this Contract shall be provided the prevailing supplements as defined by law;
  - 4) the minimum hourly rate of wages to be paid and the minimum supplement to be provided to the laborers, workmen or mechanics employed in the performance of this Contract, either by the Contractor or any Subcontractor, shall not be less than that which shall be designated by the Commissioner of Labor of the State of New York; and
  - 5) the Contractor and any Subcontractor shall pay all employees engaged in the performance of this Contract in full, less legally required deductions, in accordance with Labor Law Section 220.3. All such payments shall be made in cash, except payment may be made by check to the extent permitted by law.
- B. The Contractor agrees that as required by Labor Law Section 220-e, in case of underpayment of wages or supplements to any worker engaged in the performance of this Contract by the Contractor or any Subcontractor, the City may withhold from the Contractor out of payments due any amount sufficient to pay such worker the differences between the wages and supplements required to be paid by the Labor Law and wages and supplements actually paid such worker for the total number of hours worked plus interest as provided in the Labor Law, and that the City may disburse such amount so withheld by the City for and on account of the Contractor to the employees to whom such amount is due. The Contractor further agrees that the amount to be withheld pursuant to this Paragraph B may be in addition to any other amounts permitted to be retained by the City.
- C. Prevailing Wage Enforcement: The Contractor agrees to pay for the cost of any investigation conducted by or on behalf of the City which discovers a failure to pay prevailing wages by the Contractor or its subcontractor(s). The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the City is hereby authorized to deduct from the Contractor's account an amount equal to the cost of such investigation.
- D. Daily Sign-Out Log Requirements:
  - 1) Each day of the Contract Work, the Contractor and its subcontractors shall complete a Daily Sign-Out Log acceptable to the City for all their hourly employees performing work on the Project. In addition, the Contractor and

its subcontractors shall insure that all employees listed on the daily log verify the information on the log applicable to them by signing next to their name.

- 2) The Contractor and its subcontractors shall deliver the Daily Sign-Out Log originals to the Engineer or his representative at a frequency acceptable to that representative. However, the Contractor's and its subcontractors' log submissions must be current before the City will process the Contractor's Requests for Payments for any particular period.
- E. If during the performance of the work a harmful dust hazard is created for the elimination of which appliances or methods have been approved by the Industrial Board of Appeals of the State of New York, such appliances and methods shall be installed, maintained and effectively operated by the Contractor in compliance with Labor Law Section 222-a. If Labor Law Section 222-a is not complied with, the City may void this Contract in which event the City shall have the same rights and remedies as it would have in the case of termination under this Contract in addition to any other rights and remedies of the City.

#### ARTICLE 35. NON-DISCRIMINATION PROVISIONS

- A. The Contractor agrees, as required by Labor Law Section 220-e of the Labor Law, as amended, that by signing this Agreement, the Contractor agrees that it, or any person acting on its behalf:
  - 1) will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff, termination, and all other terms and conditions of employment;
  - 2) will not discriminate in the selection of Subcontractors on the basis of the owner's, partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, or sexual orientation; and
  - 3) will permit the City to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such requirements.
- B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any such requirements, such noncompliance shall constitute a material breach of this Contract. The Contractor further understands that, as provided in Section 220-e of the Labor Law, as amended, there may be deducted from the amount payable to it by the City under this Contract a penalty of fifty dollars (\$50.00) for each person for each calendar day during which said person was discriminated against or intimidated by reason of race, creed, color, disability, sex, or national origin in violation of the provisions of this contract. The City may impose any or all of the following sanctions:
  - 1) disapproval of the Contractor;
  - 2) suspension or termination of this Contract;
  - 3) declaring the Contractor in default; or
  - 4) adoption and adherence to an employment program.
- C. The Contractor understands that, as provided in Section 220-e of the Labor Law, as amended, this Contract may be cancelled or terminated by the City, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms and conditions of this Contract with regard to discrimination on the basis of race, creed, color, disability, sex or national origin. The City may declare any contractor who has repeatedly failed to comply with Section 220-e of the Labor Law non-responsible.

#### ARTICLE 36. CITY'S RIGHT TO DECLARE CONTRACTOR IN DEFAULT

In addition to those instances specifically referred to in other Articles herein, the City shall have the right to declare the Contractor wholly or partially in default of the work and to terminate the Contract if:

- A. The Contractor becomes insolvent; or if
- B. The Contractor makes an assignment for the benefit of creditors pursuant to the statutes of the State of New York; or if
- C. A voluntary or involuntary petition in bankruptcy be filed by or against the Contractor; or if
- D. The Contractor fails as required by this Contract to commence work when notified to do so by the City; or if
- E. The Contractor shall abandon the work; or if
- F. The Contractor shall refuse to proceed with the work when and as directed by the Engineer; or if
- G. The Contractor shall without just cause reduce its working force to a number which, if maintained, would be insufficient, in the opinion of the City to complete the work in accordance with the approved Progress Schedule, and shall fail or refuse sufficiently to increase such working force when ordered to do so by the City; or if
- H. The Contractor shall subject, assign, transfer, convey or otherwise dispose of this Contract other than as herein specified; or if
- I. A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or if

- J. The City shall be of the opinion that the Contractor is or has been unnecessarily, unreasonably or willfully delaying (i) the performance and completion of the work, or (ii) the award of necessary subcontracts, or (iii) the placing of necessary material and equipment orders; or if
- K. The City shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or if
- L. The City shall be of the opinion that the Contractor is not or has not been executing the Contract in good faith and in accordance with its terms; or if
- M. The City shall be of the opinion that the work cannot be completed within the time herein provided therefore or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the Engineer's opinion, attributable to conditions within the Contractor's control; or if
- N. The work is not completed within the time herein provided therefore or within the time to which the Contractor may be entitled to have such completion extended.
- O. Before the City shall exercise the right to declare the Contractor in default by reason of the conditions set forth in Items numbered A, D, E, F, J, K, L, M and N the Contractor shall have an opportunity to be heard, on two (2) days notice, at which hearing the Contractor may have a stenographer present; provided, however that a copy of such stenographic notes, if any, shall be furnished to the City.

#### ARTICLE 37. TERMINATION BY THE CITY

In addition to the right to terminate in the event of a default under Article 36, the City may, at any time, terminate this Contract for the convenience of the City by written notice to the Contractor and in such event:

- A. The Contractor shall upon receipt of such notice, unless otherwise directed by the City:
  - 1) stop work on the date specified in the notice;
  - 2) take such action as may be necessary for the protection and preservation of the City's materials and property;
  - 3) cancel all cancelable orders for material, labor and/or equipment;
  - 4) assign to the City and deliver to the site or any other location designated by the City, any non-cancelable orders for material, labor and/or equipment that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract and not incorporated in the work;
  - 5) take no action which will increase the amount payable by the City under this Contract.
- B. On all lump sum contracts, the City will pay the Contractor:
  - 1) Its direct cost as hereinafter defined or the fair and reasonable value, whichever is less, for:
    - a) the portion of the work completed up to the time of termination; and
    - b) non-cancelable material and equipment that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract but not incorporated in the work; and
  - 2) Five (5) percent of the direct cost as hereinafter defined; and
  - 3) In addition to the foregoing, the Contractor shall be paid five (5) percent of the difference between the Lump Sum Contract price and the total of all payments made prior to the notice of termination plus all payments allowed pursuant to Paragraph B Subsections 1 and 2 of this Article.
- C. On all unit price Contracts, the City will pay the Contractor:
  - 1) For all completed units, the unit price stated in the Contract; and
  - 2) For uncompleted units, payment will be made pursuant to the provisions of Paragraph B Subsections 1 and 2 of this Article.
- D. Direct costs as used in this Article shall mean:
  - 1) The actual purchase price of material and equipment plus necessary and reasonable delivery costs; and
  - 2) Actual cost of labor involved in construction and installation at the site; and
  - 3) Actual cost of necessary bonds and insurance purchased pursuant to the requirements of this Contract less any amounts that have been or should be refunded by the Contractor's sureties or insurance carriers.
  - 4) Direct costs shall not include overhead.
- E. In no event shall any payments under this Article exceed the Contract price for such items.
  - 1) All payments pursuant to this Article shall be in the nature of liquidated damages and shall be accepted by the Contractor in full satisfaction of all claims against the City arising out of the termination.
  - 2) The City may deduct or set off against any sums due and payable pursuant to this Article, any claims it may have against the Contractor.
- F. All payments pursuant to this Article are subject to audit.

#### ARTICLE 38. EXERCISE OF THE RIGHT TO DECLARE DEFAULT

The right to declare in default for any of the grounds specified or referred to in Article 36 hereof shall be exercised by sending the Contractor a notice setting forth the ground or grounds upon which such default is declared.

#### ARTICLE 39. QUITTING THE SITE

Under receipt of such notice in Article 38, the Contractor shall immediately discontinue all further operations under this Contract and shall immediately quit the site, leaving untouched all plant, materials, equipment, tools and supplies then on the site. The site must be made safe and secure from all hazards.

#### ARTICLE 40. COMPLETION OF THE WORK

- A. The City, after declaring the Contractor in default, may then have the work completed by such means and in such manner, by Contract with or without public letting, or otherwise, as he may deem advisable, utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies remaining on the site, and also such Subcontractors, as he may deem advisable.
- B. After such completion, the City shall make a certificate stating the expense incurred in such completion, which shall include the cost of re-letting and also the total amount of liquidated damages (at the rate provided for in the Schedule "A" to this General Agreement) from the date when the work should have been completed by the Contractor in accordance with the terms hereof to the date of actual completion of the work. Such certificate shall be binding and conclusive upon the Contractor, his Sureties, and any person claiming under the Contract, as to the amount thereof.
- C. The expense of such completion shall be charged against and deducted out of such moneys as would have been payable to the Contractor if he had completed the work; the balance of such moneys, if any, subject to the other provisions of this Contract, to be paid to the Contractor without interest after such completion. Should the expense of such completion exceed the total sum which would have been payable under this Contract if the same had been completed by the Contractor, any such excess shall be paid by the Contractor to the City upon demand.

#### ARTICLE 41. PARTIAL DEFAULT

- A. In case the City shall declare the Contractor in default as to a part of the work only, the Contractor shall discontinue such part, shall continue performing the remainder of the work in strict conformity with the terms of the Contract and shall in no way hinder or interfere with any other contractors or persons whom the City may engage to complete the work as to which the Contractor was declared in default.
- B. The provision of this Contract relating to declaring the Contractor in default as to the entire work shall be equally applicable to a declaration of partial default, except that the City shall be entitled to utilize for completion of the part of the work as to which the Contractor was declared in default only such plant, materials, equipment, tools and supplies as had been previously used by the Contractor on such part.

#### ARTICLE 42. PERFORMANCE OF UNCOMPLETED WORK

In completing the whole or any part of the work the City shall have the power to depart from or change or vary the terms and provisions of this Contract, provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variation, even to the extent of accepting a lesser or different performance shall not affect the conclusiveness of the City's certificate of the cost of completion referred to in Article 40 hereof, nor shall it constitute a defense to an action to recover the amount by which such certificate exceeds the amount which would have been payable to the Contractor hereunder but for his default

#### ARTICLE 43. CITY'S RIGHT TO AUDIT AND INSPECTION OF RECORDS

- A. The Contractor shall maintain and keep and shall require any subcontractor to maintain and keep, for a period of at least six (6) years after the date of final acceptance, all records and other data relating to the work.
- B. Contractor's records shall be subject to audit and such records shall include but not be limited to accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rates and dividends; and any other Contractor records which may have a bearing on matters of interest to the City in connection with the Contractor's work for the City all of the foregoing hereinafter referred to as "records" shall be open to inspection and subject to audit and/or reproduction by the City or its authorized representative to the extent necessary to adequately permit evaluation and verification of:
  - 1) Contractor compliance with Contract requirements;
  - 2) compliance with the City's business ethics policies set forth herein; and
  - 3) compliance with provisions for pricing change orders, invoices or claims submitted by the Contractor or any of his payees.

Other specific records subject to audit include all information, materials and data of every kind and character such as documents, subscriptions, recordings, computerized information, agreements, purchase order, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Contract. In those situations where Contractor's records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), Contractor agrees to provide the City's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange formats.

- C. The City or its designee shall be entitled to audit all of the Contractor's records for a period of six years after final payment or longer if required by law.
- D. Contractor shall require all payees (including those entering into lump sum subcontracts and lump sum major material purchase orders), to comply with the provisions of this Article by insertion of the requirements hereof in a written contract agreement between Contractor and payee. Requirements to include flow-down audit provisions in contracts with payees will apply to subcontractors, sub-subcontractors, material suppliers, etc. When working under any type of contract including lump sum agreement, unit price agreements, time and material agreements, cost plus agreements, etc., Contractor will cooperate fully and will cause all payees to cooperate fully in furnishing or in making available to the City from time to time whenever requested in an expeditious manner any and all such information, materials and data required by this Article of the Contract.
- E. The City through its authorized representative(s) shall have access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
- F. If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges (of any nature) by the Contractor to the City in excess of one-half of one percent (.5%) of the total Contract billings, in addition to repayment or credit for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Contractor.

#### ARTICLE 44. BUSINESS ETHICS

- A. During the course of pursuing contracts with the City and while performing contract work in accordance with this agreement, Contractor agrees to maintain business ethics standards which are aimed at avoiding any real or apparent impropriety or conflict of interest which could be construed to have an adverse impact on the dealings with the City.
- B. Contractor shall permit interviews of employees, reviews and audits of accounting or other records by the City representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Contractor's employees, agents, representatives, vendors, Subcontractors and other third parties paid by Contractor in their relations with the City's current or former employees or employee relatives.
- C. Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with the City's best interests. These obligations shall apply to the activities of Contractor employees, agents, subcontractors, etc. in their dealings and relations with the City's current and former employees and their relatives. For example, Contractor employees, agents or subcontractors shall not make or provide to be made any gifts, entertainment, payments, loans, or other considerations to the City's representatives, employees or their relatives.
- D. Contractor agrees to notify the City within 48 hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this Article.

#### ARTICLE 45. INVESTIGATIONS

- A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the City or by an inspector general or other investigatory authority of a Federal, State of New York or governmental agency or conducted by a Federal, State or governmental Agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath.
  - 1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease,

permit, contract, or license entered into with the City, State, or any political subdivision or public authority of New York or other public corporation thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State; or,

2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in any investigation, audit or inquiry by any agency empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the City of by an inspector general or other investigatory authority of a State or City governmental agency that is a part of interest in, and is seeking testimony concerning the award of or performance under, any transaction, agreement, lease, permit, Contract, or license entered into with the City, the State or other political subdivision or public authority or other public corporation thereof or any local development corporation within the City, or any public benefit corporation organized under the laws of the States, then:

- (a) The City may convene a hearing, upon not less than five (5) days Notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.
- (b) If any non-governmental party to such a hearing requests an adjournment, the Contractor agrees for itself and for those acting on its behalf that the City may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to paragraph E below without the City incurring any penalty or damages.

- B. The Contractor agrees for itself and for those acting on its behalf that the penalties which may be imposed by the City after such a hearing and a final determination by the City may include but shall not exceed:
- 1) The disqualification for a period not to exceed five (5) years from the date of such a determination of any person, or any entity of which such a person was a member at the time the testimony was sought, from obtaining any contract lease, permit or license with or from the City; and/or
  - 2) The cancellation or termination of any and all existing contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted thereunder, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City's incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
- C. The City shall consider and address in reaching its determination and in assessing an appropriate penalty the factors in paragraphs (1) and (2) below. The City may also consider, if relevant and appropriate, the criteria established in paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:
- (1) The parties' good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought;
  - (2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity;
  - (3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses; and
  - (4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in any entity subject to penalties under paragraph D above, provided that the party or entity has given actual notice to the City upon the acquisition of the interest, or at the hearing called for in paragraph C (1) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- D. Definitions
- 1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
  - 2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
  - 3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases or permit from or through the City or otherwise transacts business with the City.
  - 4) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, owner, other principal or employee.
- E. The City in its sole discretion may terminate this Contract upon not less than three (3) days' notice in the event the Contractor fails to promptly report in writing to the City's Police Commissioner or the City's Inspector General any solicitation for money, goods, future employment or other benefit or thing of value by or on behalf of any employee of the City or any other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.

#### ARTICLE 46. CONTRACTOR'S WARRANTIES

In consideration of, and to induce the award of this Contract to it, the Contractor represents and warrants:

- A. That it is financially solvent, and sufficiently experienced and competent to perform the work; and
- B. That the facts stated in its bid and the information provided by it in the Information for Bidders is true and correct in all respects; and
- C. That its principals have read and complied with all the requirements set forth in the Information for Bidders; and
- D. That neither it nor any directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the services herein provided; and
- E. That in the performance of this Contract, it shall employ no person having such interest or possible interest. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or part, from the City treasury, shall participate in any decision relating to this Contract which affects his or her personal interest or the interest of any corporation, partnership or association in which he is directly or indirectly interested nor shall any such person have any interest, direct or indirect, in this Contract or in the proceeds thereof; and
- F. That the Contractor is familiar with all Federal, State, or other laws, ordinances, orders, rules and regulations, which may in any way affect the work; and
- G. That the Contractor has carefully examined the Contract and the site of the work and that, from the Contractor's own investigations is satisfied as to the nature and location of the work, the character quality and quantity of surface and subsurface materials likely to be encountered, the character or equipment and other facilities needed for the performance of the work, the general and local conditions, and all other materials or items which may affect the work; and
- H. That the Contractor is an independent contractor and not an employee of the City. Unless the Contract specifically provides otherwise, the conduct and control of the work shall be entirely the Contractor's responsibility at all times.

#### ARTICLE 47. CONTRACTOR PERFORMANCE EVALUATION AND CRITERIA

- A. The Engineer will evaluate a Contractor's performance for compliance with contract requirements. A Contractor will be evaluated by the Engineer at least once during performance of the contract ("interim evaluation"). In addition, a Contractor will receive a final evaluation near the completion of the project. A Contractor's overall performance will be rated by the Engineer as either outstanding, very good, satisfactory, marginal or unsatisfactory.
- B. A Contractor's performance will be evaluated by the Engineer pursuant to the following criteria:
  - (1) Quality of work
  - (2) Management
  - (3) Scheduling
  - (4) Adherence to safety, industrial and hygiene requirements
- C. A marginal or unsatisfactory evaluation in any of the elements of the criteria set forth in paragraph B of this section may serve as a basis for a Contractor to receive an overall rating of marginal or unsatisfactory.
- D. A Contractor that receives an overall evaluation of either marginal or unsatisfactory will be given an opportunity to cure any deficiencies or irregularities in its performance.
- E. If a Contractor receives an overall interim evaluation of marginal, the Contractor may be suspended from bidding or subcontracting on future City projects for a period of thirty (30) to sixty (60) days. If a Contractor's interim evaluation is unsatisfactory, the Contractor may be suspended from bidding or subcontracting on future City projects for a period of (30) to ninety (90) days.
- F. If the City determines that a Contractor has failed to provide a cure for the deficiencies or irregularities that resulted in either a marginal or an unsatisfactory interim evaluation, or if the Contractor on a subsequent interim evaluation is rated less than satisfactory, the Contractor will be disqualified from bidding or subcontracting for the remaining term of the contract.
- G. A Contractor that receives an overall marginal, final evaluation will be disqualified from bidding or subcontracting on future City projects for one (1) year. A Contractor that receives an unsatisfactory rating will be disqualified from bidding, contracting or subcontracting on City projects for a period of up to five (5) years.
- H. If a Contractor is disqualified pursuant to a marginal or unsatisfactory evaluation, the Contractor may appeal the evaluation to the Board of Contract and Supply or its designated representative.

#### ARTICLE 48. CLAIMS AND ACTIONS THEREON

- A. No claims against the City for damages for breach of Contract in compensation for extra work shall be made or asserted in any action or proceeding at law or in equity, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as have been herein provided.

- B. Nor shall any such action or proceeding be instituted or maintained on any such claims unless such action or proceeding be commenced within one (1) year after the date of the filing in the Office of the City Comptroller of the final payment voucher pursuant to Article 28; except that an action or proceeding on a claim for moneys deducted, retained or withheld under the provisions of this Contract or of law, must be commenced within one (1) year after the date of final payment hereunder or after such moneys become due and payable hereunder, whichever is later, and further except that an action or proceeding on a claim based upon the City's exercise of the right to declare the Contractor in default must be commenced within six (6) months after the date the City declared the Contractor in default.
- C. In the event any claim is made or any action brought in any way relating to the Contract herein, the Contractor shall diligently render to the City without additional compensation any and all assistance which the City may require of the Contractor.

#### ARTICLE 49. NO CLAIM AGAINST OFFICIALS, OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by the Contractor against any official, officer, agent, or employee of the City for, or on account of, anything done or omitted to be done in connection with this Contract.

#### ARTICLE 50. INVENTIONS, PATENTS AND COPYRIGHTS

- A. The Contractor shall be solely responsible for and shall indemnify the City against any claims and judgments for damages for any infringement of patents, or use of patented articles, tools, materials, equipment, appliances or processes in the performance or completion of the work, including all costs and expenses which the City shall or may incur or be obliged to pay by reason thereof.
- B. Any discovery or invention arising out of or developed in the course of performance of this Contract shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- C. No report, document or other data produced in whole or in part with Contract funds shall be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for the Contract.
- D. If any copyrightable material is developed under, or in the course of performing this Contract, any Federal Agency providing federal financial participation for the Contract shall have a royalty free, non exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, the work for governmental purposes.
- E. In no event shall Subsections B, C, and D of this Article be deemed to apply to any report, document or other data, or any invention of the Contractor which existed prior to, or was developed or discovered independently from, its activities related to or funded by this Contract.

#### ARTICLE 51. SERVICE OF NOTICE

- A. The Contractor hereby designates the business address specified in his bid as the place where all notices, directions or other communications to the Contractor may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction or communication to the aforesaid place, or depositing it in a postpaid wrapper addressed thereto in any post office box regularly maintained by the United States Postal Service, shall be conclusively deemed sufficient service thereof upon the Contractor as of the date of such delivery or deposit.
- B. Such address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to the City.
- C. Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon the Contractor personally, or, if the Contractor be a corporation, upon any office or director thereof, or any other methods as provided by law.

#### ARTICLE 52. UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT SEVERABILITY

If this Contract contains any unlawful provision not an essential part of the Contract and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Contract without affecting the binding force of the remainder.

#### ARTICLE 53. ALL LEGAL PROVISIONS DEEMED INCLUDED

It is the intent and understanding of the parties to this Contract that each and every provision of law required to be inserted in this Contract shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this

Contract shall forthwith upon the application of either party be amended by such insertion as to comply strictly with the law and without prejudice to the rights of either party hereunder.

#### ARTICLE 54. ANTITRUST ASSIGNMENT

The Contractor hereby assigns, sells and transfers to the City of Yonkers all right, title and interest in and to any claims and causes of action arising under the antitrust laws of New York State or of the United States relating to the particular goods or services purchases or procured by the City under this Contract.

#### ARTICLE 55. FORUM PROVISION CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

- A. This Contract shall be deemed executed in the City of Yonkers, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York.
- B. The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States, located in White Plains, New York ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the County of Westchester. To effect this agreement and intent, the Contractor agrees:
- 1) If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing; and
  - 2) With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside Westchester County.
  - 3) With respect to any action between the City and the Contractor in Federal Court located in White Plains, New York, the Contractor expressly waives and relinquishes any right it might otherwise have to move or transfer the action to a United States Court outside White Plains, New York.
  - 4) If the Contractor commences any action against the City in court located other than in the Westchester County, New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in Westchester County, New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter re-institute the action in a court of competent jurisdiction in Westchester County, New York.
- C. If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

#### ARTICLE 56. TAX EXEMPTION

- A. The City is exempt from payment of state, local taxes, and sales and compensating use taxes of the State of New York and of cities and counties on all materials and supplies incorporated into completed Work. These taxes are not to be included in bids. This exception does not apply to tools, machinery, equipment or other property leased by or to the Contractor or to supplies and materials which, even though they are consumed, are not incorporated into the completed work, and the Contractor and subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on said leased tools, machinery equipment or other property and upon all said unincorporated supplies and materials.
- B. The Contractor shall obtain any and all necessary certificates or other documentation from the appropriate governmental agency or agencies, and use said certificates or other documentation as required by law, rule or regulation.

#### ARTICLE 57. MERGER CLAUSE

This written agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

#### ARTICLE 58. MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with **ARTICLE VI OF THE CODE OF THE CITY OF YONKERS** the bidder, by submission of this bid, certifies that if it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder: has business operations in Northern Ireland, such bidder, shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

ARTICLE 59. COMPENSATION TO BE PAID TO CONTRACTOR

The City will pay and the Contractor will accept in full consideration for the performance of the Contract, subject to any additions and deductions as provided herein, the sum of:

Written in Words: \_\_\_\_\_

Written in Figures: \$ \_\_\_\_\_

IN WITNESS WHEREOF: The Mayor, or his authorized designee, on behalf of the City of Yonkers and the Contractor, have executed this agreement in duplicate for the purposes herein mentioned.

**The City of Yonkers** \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Name of Contractor

By: \_\_\_\_\_  
(Authorized Officer of the Firm or Corporation)

Where the Contractor is a Corporation, add:  
Attest:

\_\_\_\_\_  
(Secretary of the Corporation) (Seal)

APPROVED AS TO FORM

\_\_\_\_\_  
YONKERS CORPORATION COUNSEL

DATE OF BOCS APPROVAL \_\_\_\_\_

## ACKNOWLEDGEMENT OF THE CITY OF YONKERS

State of New York  
County of Westchester  
City of Yonkers. ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, and known to me to be the Mayor of the City of Yonkers; executed the foregoing instrument pursuant to a resolution of the City of Yonkers Board of Contract and Supply; and he acknowledged to me that he executed the same for and on behalf of the City of Yonkers for the purposes herein mentioned.

Notary Public or Commissioner of Deeds

## ACKNOWLEDGEMENT WHERE THE CONTRACTOR IS A CORPORATION

STATE OF \_\_\_\_\_)  
COUNTY OF \_\_\_\_\_)      SS:

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

Notary Public

**ACKNOWLEDGEMENT OF CONTRACTOR, IF A PARTNERSHIP**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally  
came \_\_\_\_\_, to me known and known to me to be a member  
of the firm \_\_\_\_\_; described in and who executed the same for and in  
behalf of said firm for the uses and purposed mentioned therein.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGEMENT OF CONTRACTOR, IF AN INDIVIDUAL**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally same  
\_\_\_\_\_, to me known and known to me to be the person described in and  
who executed the foregoing instrument, and he/she duly acknowledged that he /she executed the same.

\_\_\_\_\_  
Notary Public

**CITY OF YONKERS, NEW YORK  
DEPARTMENT OF ENGINEERING**

**Bid No. ITB-5738**

**Contract No.** \_\_\_\_\_

**Funding** \_\_\_\_\_

\_\_\_\_\_

**SOLICITATION & CONTRACT DOCUMENTS  
FOR**

**Title: Installation of Automatic Meter Reading System Including Water Meter Replacement**

\_\_\_\_\_

**Amount** \_\_\_\_\_

**Contractor** \_\_\_\_\_

**Surety** \_\_\_\_\_

\_\_\_\_\_

**Awarded** \_\_\_\_\_

**Dated** \_\_\_\_\_

**Executed** \_\_\_\_\_

**ITB-5738 - ATTACHMENT A - Bid Schedule of Prices**  
**For**  
**Installation of Automatic Meter Reading System**  
**Including Replacement of Water Meters**

Bid Schedule of Prices is divided into three (4) Sections. The Contractor must provide prices for all items within each section, for every section. Failure to comply may result in a rejection of the bid.

Each unit price within each section shall include but not limited to furnishing, installing and providing all necessary material, equipment, machinery, tools, labor, services, skills, and other items of whatever nature required to provide and complete a turn-key automatic meter reading solution for all City of Yonkers water customers as specified within this bid documents.

Each appropriate unit price shall also include mobilization, notifications of all water customers, meter testing where required, isolating valve replacement/installation if required, installation of strainer if required, piping reconfiguration to fit a new meter, data validation and development of new database files for all meters, other nonstandard water meter installation, insurance and bonding, field verification, review of existing database files, submittals and shop drawings; equipment testing, start-up and activation services; cables and connectors; operation and maintenance manuals; warranties; traveling expenses and other items required to complete the project in all its phases and to the satisfaction of the commissioner of DPW.

**Section No. 1 – Phase I: Automatic Meter Reading System**

Item No.	EST QTY & Unit	General Description with unit prices written in words	Unit Cost	Total Amount qty x unit price
1	Lump Sum	For furnishing, installation, testing and activation of all equipment, hardware and software of AMR system complete (turn-key solution) as specified including mobilization, radio propagation study, development of plan and map for full system deployment, interface of AMR system with Utility Billing system, training, technical support, licensing , at _____ _____ _____dollars and _____ cents per unit	N/A	\$
2	12 Each	For furnishing, installation , testing, activation of primary/smart repeaters with antennas, signal strength units, back-up batteries, etc, complete, at _____ _____ _____dollars and _____ cents per unit	\$	\$

**Section No. 1 - continued**

Item No.	EST QTY & Unit	General Description with unit prices written in words	Unit Cost	Total Amount qty x unit price
3	4 Each	For furnishing, installation , testing, activation of mini repeaters with antennas, back-up batteries, complete, at _____ _____dollars and _____ cents per unit	\$	\$
4	4 Each	For furnishing a field terminal programming unit ready to be used in the field, at _____ _____dollars and _____ cents per unit	\$	\$

**The Section No. 1 total price for items 1 through 4 inclusive, in words is:**

\_\_\_\_\_

**Dollars and \_\_\_\_\_ Cents**

**\$ \_\_\_\_\_**

**Section No. 2 – Phase II: Commercial and Industrial Meters**

Item No.	EST QTY & Unit	General Description with unit prices written in words	Unit Cost	Total Amount qty x unit price
5	30 Each	For furnishing and installation of 8-inch new meter with electronic register and AMR device to replace the existing meter including AMR device activation, at _____ – _____dollars and _____ cents per unit	\$	\$
6	70 Each	For furnishing and installation of 6-inch new meter with electronic register and AMR device to replace the existing meter including AMR device activation, at _____ _____dollars and _____ cents per unit	\$	\$

**Section No. 2 – continued**

Item No.	EST QTY & Unit	General Description with unit prices written in words	Unit Cost	Total Amount qty x unit price
7	300 Each	For furnishing and installation of 4-inch new meter with electronic register and AMR device to replace the existing meter including AMR device activation, at _____ _____dollars and _____cents per unit	\$	\$
8	320 Each	For furnishing and installation of 3-inch new meter with electronic register and AMR device to replace the existing meter including AMR device activation, at _____ _____dollars and _____cents per unit	\$	\$
9	525 Each	For furnishing and installation of 2-inch new meter with electronic register and AMR device to replace the existing meter including AMR device activation, at _____ _____dollars and _____cents per unit	\$	\$
10	Lump Sum	For furnishing and installation of electronic register with AMR device on the existing Badger meter in sizes varies between 5/8-inch and 8-inch to replace the existing register, including, testing of meters 2-inch in size and larger, other related work as specified work and AMR device activation, at _____ _____dollars and _____cents per unit	N/A	\$
11	25 Each	For furnishing and installation of all new type water meters of various sizes with electronic register and AMR device located in underground vaults or pits complete including all necessary work required to replace the existing meter with new one, at _____ _____dollars _____cents per unit	\$	\$

**The Section No. 2 total price for items 5 through 11 inclusive, in words is:**

\_\_\_\_\_

**Dollars and \_\_\_\_\_ Cents**

**\$** \_\_\_\_\_

### Section No. 3 – Phase III: Residential and Light Commercial

Item No.	EST QTY & Unit	General Description with unit prices written in words	Unit Cost	Total Amount qty x unit price
12	500 Each	For furnishing and installation of 1.5-inch new meter with electronic register and AMR device to replace the existing meter including AMR device activation, at _____ – _____dollars and ____cents per unit	\$	\$
13	2,000 Each	For furnishing and installation of 1-inch new meter with electronic register and AMR device to replace the existing meter including AMR device activation, at _____ _____dollars and ____cents per unit	\$	\$
14	2,500 Each	For furnishing and installation of 3/4-inch new meter with electronic register and AMR device to replace the existing meter including AMR device activation, at _____ _____dollars and ____cents per unit	\$	\$
15	26,500 Each	For furnishing and installation of 5/8-inch new meter with electronic register and AMR device to replace the existing meter including AMR device activation, at _____ _____dollars and ____cents per unit	\$	\$

The Section No. 3 total price for items 12 through 15 inclusive, in words is:

\_\_\_\_\_

\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents \$

\_\_\_\_\_

\$ \_\_\_\_\_

## Section No. 4 – Training

16	Two days	For two (2) eight (8) hour days of onsite training on the operation and maintenance of AMR system hardware, at _____ _____dollars and _____cents per day	\$	\$
17	Three days	For three (3) eight (8) hour days of onsite application and AMR system training including data acquisition and data management software, at _____ _____dollars and _____cents per day	\$	\$

**The Section No. 4 total price for items 16 and 17 inclusive, in words is:**

\_\_\_\_\_  
\_\_\_\_\_Dollars and \_\_\_\_\_Cents  
\$ \_\_\_\_\_

**Grand Total – Sections 1+ 2 + 3+4, in words is:**

\_\_\_\_\_  
\_\_\_\_\_Dollars and \_\_\_\_\_Cents  
\$ \_\_\_\_\_.

## **SPECIFICATIONS**

### **I. QUALIFICATIONS OF BIDDERS**

### **II. SPECIFICATIONS OF SERVICES**

1. Scope of Work
2. Warranty
3. Responsibility for Damages
4. Water Customers Notification
5. Customer Complaints/Call Backs

### **III. PROJECT IMPLEMENTATION**

### **IV. TECHNICAL SPECIFICATIONS**

1. Project Mobilization
2. Automatic Meter Reading System
3. Water Meter Replacement Requirements
4. Meter Upgrades and Modification
5. Existing Data Validation and Development of New Database
6. Training and Technical Support
7. Required Submittals with the Bid Documents

### **V. SPECIFICATIONS OF WATER METERS**

1. General Requirements
2. Specification for 5/8" through 1" Cold Water, Positive Displacement Meters
3. Specifications for 1 1/2" and 2" Cold Water, Positive Displacement Meters
4. Specifications for 1 1/2"- 8" Cold Water, Single-Jet Meters
5. Specifications for 3"- 8" Cold Water Turbine Water Meters
6. Specifications for 3", 4", and 6" Compound Type Cold Water Meters

#### **I. Qualifications of Bidders**

The Prime Bidder, for itself and its subcontractors, (hereinafter "Prime Bidder") will need to exhibit extensive skills, experience and knowledge in the latest technology pertaining to water metering, automation of water meter reading system, meter replacement as well as project management during its implementation, and a proven track record of customer satisfaction.

The Prime Bidder will need to exhibit no less than five (5) years of:

- Installation experience and knowledge of a long range, independent, radio frequency, fixed base Automated Meter Reading ("AMR") system;
- Extensive knowledge of AMR system's latest technology, type and product application;
- Experience in replacement, repairs, testing and application of industrial, commercial and residential water meters and water meters installed in underground vaults and pits, including their interface with AMR type systems;
- Knowledge on all types and sizes of water metering products including bulk delivery; and

- Knowledge of Water meters' database construction and data-logging as meter replacement program progresses.

## **1. Prime Bidder**

The Prime Bidder shall employ competent, efficient employees skilled in the work assigned to them. The Prime Bidder shall provide the City with a list of names, photo identifications (I.D.), vehicle information, and other required information of the Prime Bidder employees performing the work.

The City reserves the right to approve the selection of any employee providing services. This will, in no way however, relieve the Prime Bidder of his/her/its responsibility for hiring appropriate personnel. The Prime Bidder shall, at all times, enforce strict discipline and good order among their employees.

The Prime Bidder's employees shall have on their persons, at all times, displayed in a conspicuous manner, photo identification. The photo I.D. shall have the Prime Bidder's name, employee's name, title, and signature. Prime Bidder shall provide a description of its organizational structure showing responsibilities and duties of employees, supervisors and managers.

All service staff, technicians, drivers, and field supervisors must be equipped with two-way communication. Cellular telephones, direct connect, or two-way radios are acceptable. Communication must be available between installation service, the Prime Bidder's office, and municipal offices. The Prime Bidder's staff shall not use the City's telephone for communication.

Employees without proper identification or uniforms will not be allowed to work.

The Prime Bidder employees are strictly forbidden from entering a residence where there are no adults, aged 18 or over, on the premises. The Prime Bidder shall inform City residents of this requirement.

## **II. Specifications of Services**

### **1. Scope of Work**

The Prime Bidder shall provide all necessary material, equipment, tools, labor, services and skills necessary and required to install a new city-wide, long-range radio frequency, fixed based network remote meter reading (AMR) system to read all of the City's new type of water meters and replace or upgrade existing water meters with the new type of meters/registers equipped with long range, radio frequency meter transmission unit (MTU).

The scope of work under the contract shall include the following:

1. Establish project management database to perform scheduling, tracking, verification, reporting on progress and all activities that are part of the project;
2. Mobilization and establishment of project's central command/operation station by the Prime Bidder including material and equipment storage facility;
3. Coordinate all AMR system component delivery, water meter delivery and installation activity;

4. Perform AMR system radio signal propagation analysis/study to determine the most effective deployment of repeaters, mini-repeaters and base station equipment;
5. Develop a composite map for full radio system deployment with specific sites listed for repeaters, mini-repeaters and base station antenna;
6. City-wide installation, testing and activation of AMR system, including all required hardware and software, base station's equipment and software, along with obtaining all required permits and FCC licenses;
7. Develop project implementation and distribute media campaign notices, flyers, letters and other notifications to the Yonkers water customers announcing implementation of the AMR system and water meter replacement program, along with notifications for meter replacement/installation appointments, and any other customary and/or appropriate notifications related to this project;
8. Replace existing water meters with the new type of meters equipped with meter transmission unit (MTU) that is compatible with proposed AMR system;
9. Reconfigure and/or replace water meters' isolation valve and piping if required, including other related work necessary to install new meter;
10. Water meters' database verification, data-logging and development of new database files as meter replacement program progresses including data recording on the progress at each customer site, appointment attempts, old meter information, new meter and AMR/MTU information;
11. Prompt recording and reporting of all meter installation activity and AMR system component installation activity, including encountered problems of any kind;
12. Investigation and resolution of customer service complaints and/or concerns;
13. Training City personnel for the application and maintenance of the AMR system, MTU and the new meter installation;
14. Delivery of all scraped meters that the customer does not want to retain shall be to a site designated by the City. The City will provide a release to the Prime Bidder to be executed by the property owners;
15. Clean-up of the construction sites; and
16. Perform all other work and services to complete this project in all its parts and to the satisfaction of the Commissioner of DPW.

The installation of the water meter and appurtenances shall be performed by the Prime Bidder's employees trained for such work and the employees must be familiar with home or business construction types. This shall include the mounting of AMR reading transmitters within or outside the dwelling or place of business.

Any settings that have conditions present where a standard meter installation cannot be performed shall be considered nonstandard. Nonstandard conditions include, but are not limited to, special or unusual cases such as preexisting leaks at or near the meter connection; inoperable upstream and/or downstream meter valves; no-strainer installed where applicable; curb valves not operative, buried, not existent or not to be found; poor piping conditions; and restricted indoor space which will not allow for the installation of the new meter without rearranging piping/plumbing.

Any variations from conditions as described in the contract shall be brought to the attention of the Commissioner of DPW or his designated representative. Work shall not proceed until clarification has been received. There shall be no claim for lost time.

Any work to be performed after a regular eight (8) hour working day on Saturday, Sunday or a Legal Holiday shall be performed without additional expense to the City.

Work performed under the contract may be done under reasonable hours any day provided that the Prime Bidder does not create a nuisance or disturb the peace and is working at the request of the City of Yonkers' customer. Hours for the project are expected to be Monday through Friday from 7:00 AM to 8:00 PM, and Saturday from 7:00 AM to 8:00 PM. No Sunday work is anticipated unless specifically requested or required by the property owner.

## **2. Warranty**

The Prime Bidder will guarantee all work performed for a period of one (1) year from the date of work completed. The AMR system hardware and software or other project components are to be covered by a manufacturer's warranty. Material and workmanship for a water meter of any size or meter installation application must be warranted for one (1) year from the time of installation.

If the Prime Bidder will not be the manufacturer of the proposed AMR system product, the manufacturer warranties shall be conveyed directly to the City from the date of project completion and activation. The City will not consider any third party guarantees or warranties.

The Meter Transmission Unit (MTU) shall be warranted for five (5) years from the date of activation.

The fixed network AMR system that includes repeaters, mini-repeaters, antennas, radio transceiver and system software shall carry a warranty for a minimum of one (1) year from the date of the City's written acceptance of the system.

Any and all manufacturer warranties for the water meters and the AMR system shall be turned over and assigned to the City of Yonkers after the product has been installed and tested.

The batteries in the MTUs for the AMR system shall be warranted by the manufacturer for a full ten (10) years. The warranty shall then be prorated for the next ten (10) years.

## **3. Responsibility for Damages**

All damage to water services, house piping and/or customers' property resulting from the performance of work under this contract shall be the responsibility of the Prime Bidder.

## **4. Water Customers Notification**

The Prime Bidder shall have full and direct responsibility of all customer notifications as specified in this bid. The Prime Bidder is required to contact the individual homeowner, commercial or industrial user, for the purpose of gaining access to the dwelling, structure or premises. A preliminary letter announcing the water replacement program shall be generated by the Prime Bidder with the City's consultation and sent on a City of Yonkers letterhead to Yonkers Water Customers.

In addition to the announcement letter, the Prime Bidder shall generate at least three mailings in their attempt to contact the homeowner or water user. All notices must be generated on a seven-

day cycle. If the homeowner or water user has not responded to the first notification letter by calling the Prime Bidder for an appointment, then a second notice must be mailed seven days after the initial mailing. If after seven more days an appointment still has not been made with the Prime Bidder, a third notice must be sent to the homeowner or water user urgently requesting that an appointment be made. All three notices that are mailed must explain the purpose of the contact, together with either a local or a toll free telephone number where the Prime Bidder may be reached. The Prime Bidder shall pay all postage.

The Prime Bidder shall submit sample letters and notifications he/she intends to use.

At no time and under no circumstance are technicians working for the Prime Bidder to “door knock” to obtain entrance into a customer home or commercial setting. All meter installation activity is to be pre-scheduled and coordinated by the Prime Bidder. Should, upon arrival, a scheduled customer not be present or be unable to have the water service interrupted at that time, the Prime Bidder’s technician is to contact their office promptly and advise them of the situation. The technician will move on to the next scheduled appointment and the canceled appointment shall be re-scheduled.

#### **5. Customer Complaints/Call Backs**

The Prime Bidder shall be responsible for investigating all customer complaints with respect to the meter replacement project. Any deficiencies shall be corrected at the Prime Bidder’s expense including, but not limited to, leaks that are the direct result of said work. All complaints within thirty (30) days of the meter installation must be addressed within twenty-four (24) hours of the report/complaint. Any leak report must be addressed within twelve (12) hours. The Prime Bidder’s responsibility period is established to be thirty (30) days from the date of installation.

### **III. Project Implementation**

The City of Yonkers intends to implement this project in three phases:

Phase I includes: Citywide, complete installation and activation of an independent, FCC currently regulated and licensed, Fixed Network, Automating Meter Reading System.

Prior to installation of any water meter, the entire repeater array of the AMR System/Fixed Network Backbone, as well as the base station, must be installed, activated, tested and fully operational.

The Prime Bidder is responsible for applying and paying for all necessary and required radio frequencies licensings, including, but not limited to FCC licensing.

The AMR system must also be interfaced with “Basis 2” City’s Utility Billing System.

Phase II includes: Replacement/upgrades of large commercial/industrial meters 2-inch in size and larger that are fully compatible with the proposed AMR System, including water meters located in underground vaults or pits.

Phase III includes: Replacement/upgrades of residential and light commercial water meters 1.5-inch in size and smaller with the new type of meters that are fully compatible with the proposed AMR System.

The City through its Capital Funding (Bonding) has allocated \$3,500,000 for the completion of Phases I and II. The City will bond Phase III separately.

After the installation and activation of Phase I, the work can be performed as specified in Phase II concentrating on the replacement and upgrade of approximately 1,200 of all existing 2-inch in size and larger water meters with the new type of meters equipped with Meter Transmission Units (MTUs) as specified within these contract documents. Each MTU must be activated and incorporated into already active AMR and Billing Systems as soon as the replacement/upgrade of any size of the meter is completed.

Phase III can only be performed with the written consent of the City.

#### **IV. Technical Specifications**

##### **1. Project Mobilization**

The Prime Bidder will be responsible for the supply and storage of the AMR system components, meter supply and meter replacement/upgrades for the City of Yonkers project. The City has no space to provide the Prime Bidder a staging or storage area for the proposed project.

The selected Prime Bidder for the project shall provide their own facility to store products, materials and supplies, as well as, a launch point for daily operation and installation activity, including establishing a call center so the water customers can reach the Prime Bidder to arrange a meter replacement appointment or respond to customers concerns.

The Prime Bidder shall establish a project management database to perform scheduling, tracking, verification, reporting on progress and all activities that are a part of the project.

##### **2. Automatic Meter Reading System**

The AMR System shall be the latest available technology in independent, Long-Range, Radio Frequency (RF), Fixed Based network system operating on a dedicated, licensed radio frequency.

The Prime Bidder shall provide a robust, dependent, highly efficient and effective error free RF fixed network for the City of Yonkers.

Each AMR system shall have a long range (at least twenty-miles) battery operated meter radio transmission unit, which shall eliminate the need for any extensive network array of signal repeaters.

The new system shall automatically read each of the new water meters each day. Accompanying the bid documentation, the Prime Bidder must submit detail information, specifications and cut-sheets of all components/equipment, etc of the proposed AMR system for review and approval by the City of Yonkers.

The independent, Fixed Network AMR system shall operate on a FCC licensed frequency in the VHF or UHF bands.

Frequencies in the radio spectrum are expected to be stable and shall:

- allow a single channel to be dedicated to the meter reading operation;
- prevent erroneous reading errors; and
- prevent interference from other radio devices.

All radio frequency AMR equipment must comply with current Federal Communications Commission (FCC) requirements that include proper labeling of any system components. The Prime Bidder must have supporting documentation available upon request to verify compliance.

The AMR system shall consist of the following:

- a) **The Meter Transmission Unit (MTU)** - collects readings or interrogates the connected meter and transmits the data either directly to transceiver at central location or to the radio repeater. It can be installed inside or outside for easy access and is housed within a reinforced polyester shell that provides both moisture and tamper protection. The unit should transmit its signal above grade as far as twenty (20) miles, line of sight and up to three (3) miles from a pit setting. The MTU should read all manufacturer's encoders and digital meters without any programming of the unit. The temperature range for normal operation of MTU is minus 40° F to + 158°F.
- b) **The Primary Repeater Unit with Antenna** - utilizes a radio transceiver unit (same as at the Base Station). The unit is housed in a locked NEMA-4 type enclosure that is wall mounted and connected to both 120VAC power and to the Omni-directional antenna. The antenna works for both receiving and transmitting data. The radio frequency signal repeater utilizes a store-and-forward process for data transmission. A series of repeaters with antennas shall be strategically placed within the boundaries of the City of Yonkers. Repeaters and antennas shall be mounted only on City owned buildings, structures or locations where both security and power are available. A shield type cable shall run from the antenna to the repeater. The repeater shall have a battery back-up that allows at least 72 hours of operation in the event of power failure.
- c) **The Mini- repeaters** (if required)- shall have the same functionality as the repeaters but do not have to have some of the same programmability functions of the standard repeater.
- d) **The Data Acquisition Base Station-** consists of two primary components: Radio Transceiver and PC. It collects read and fault reports in real time and stores in central office computer.
  - **Radio Transceiver-** is the base station component located at the central location that actually receives information from both MTU's and repeaters. This unit shall be designed to operate on narrow band VHF or UHF frequencies and be capable of handling data rates as high as 20Kbytes per second. This compact unit can be fully programmed by an attached PC.
  - **Command Personal Computer (PC)** – is the server and operating software required to run the new AMR system program. The Prime Bidder shall supply PC, AMR system and data Management Software that can be interfaced with the City's Utility Billing System.

The AMR system software shall be capable of handling the multiple commodities read simultaneously and separating commercial accounts from residential accounts. The software shall provide meter consumption data to be displayed in a graphical and digital format for daily,

weekly or monthly consumption. It must also permit system demand analysis by allowing groups of meters, as segregated by size or location, to be viewed simultaneously.

Also, the software shall include the following features:

- reports and graphs by customers;
- date and water consumption;
- current and historic reports;
- leak warnings;
- loss and theft management;
- real-time system fault detection;
- identifies and locates leak or high water consumption, faults, theft and tampering; and
- audio and visual warnings.

The Prime Bidder shall provide the City with programming devices to permit installation, testing and activation of radio MTU units and integration into the AMR network.

Prior to installation of the AMR system, the Prime Bidder shall conduct a radio propagation study to determine the most efficient and effective deployment of repeaters, mini-repeaters and base station equipment to ensure 100% RF integrity at all points of the City distribution network.

See **Attachment 1** for a list and map/location of all City owned facilities and structures including, water towers, schools, libraries, fire and police stations

A meeting will be scheduled with the selected Prime Bidder, his involved parties and the City MIS Department to determine the location of the base station equipment (most likely at City Hall) and what the connection to the City main frame computer system and/or billing system will be, including other related issues.

The Prime Bidder shall develop a plan and composite map for full radio system deployment with specific sites listed for repeaters, mini-repeaters and base station antennas ready for FCC License application.

On behalf of the City, the Prime Bidder shall apply, pay for and obtain FCC licensing to operate the AMR system.

### **3. Water Meter Replacement Requirements**

It is estimated that the City of Yonkers has 31,000 industrial, commercial and residential active water meters in the field.

Approximately twenty-five (25) of these meters, of various sizes, are installed in underground vaults or pits where confined space entry regulations must be followed. Some of these meters may currently be submerged under water and have very limited accessibility.

See **Attachment 2** for a list of meters and their sizes that are located in pits. The provided list may not be accurate or complete but based on field findings, the Prime Bidder must replace all meters in any vaults and pits.

The Prime Bidder shall replace each meter with the new type of meter equipped with MTU suitable for flooding and wet conditions with very limited or no ventilation. The new proposed meter shall be integrated into the proposed AMR system.

Active water meters in the field are of different manufacture, types and length, with different kind of registers.

Due to the various lengths of existing meters and their settings/installation, some piping reconfiguration may be needed to facilitate the installation of the new type of meter. Some upstream and/or downstream meters' isolating valves, if any, may be in poor condition and need to be replaced or installed if there are none.

A resilient-seat type of gate valve, or approved equal, shall be used for the replacement of meters that are 3-inch or larger. A ball type of valve, or approved equal, shall be used for meters that are 2-inch in size or smaller.

The Prime Bidder must verify field conditions, determine the required scope of work, have all tools, materials and equipment before water can be turned-off to do the scheduled meter replacement work. Water service to each customer must be restored the same day the water was turned-off.

All new type meters 2-inch in size or smaller and their registers shall be of the same manufacturer/ type and must be approved by the City of Yonkers.

Existing meters 1¼ – inch in size shall be replaced with the 1-inch new meters or 1.5 – inch meter at all facilities having flushometers.

Meters 3-inch in size or larger shall be chosen based on the site-specific application with consideration to water consumption, meter efficiency, correct sizing, the meter's performance and field conditions.

New installation of meters 2-inch in size or larger shall have provisions for in-line meter testing.

All new installed meters shall have valves on both sides of the meter and components that provide strainer/screen functions at the inlet end of the meter. Strainers can be integrated within the meter or have an external body strainer.

#### **4. Meter Upgrades and Modifications**

Badger meters installed within the last few years shall be upgraded to include some modifications if necessary. The City anticipates that these meters will have been installed correctly to the manufacturer's recommendations and their performance and accuracy is satisfactory.

Any Badger water meters that meet these requirements shall have the existing registers replaced with the new universal type of register equipped with a radio transmitter/MTU unit as specified to communicate and integrate with the proposed AMR system.

If the existing Badger meter is not equipped with a strainer or valve on either side of the meter, then if necessary, the Prime Bidder shall modify the existing piping configuration to fit the strainer and/or valve(s) and reinstall the existing meter with new type of register and MTU.

The existing Badger meters, 2-inch in size or larger, shall be tested to evaluate meter accuracy and performance. Test results must be provided to the City with detailed information regarding each meter tested.

See **Attachment 3** for a list of all addresses/locations and sizes of all Badger meters that have been installed within the last four years.

## **5. Existing Data Validation and Development of New Database**

New, complete, and accurate database files and data-logging procedures need to be established and implemented as the meter replacement program progresses.

Certain information in existing database files must be verified and validated in the field and corrected, if necessary.

A new digital database file must be generated for each new type of meter installed with a AMR/MTU unit. The new meter with a MTU unit must be assigned to established account numbers for each meter's property address.

In addition to the Audit's database files, the City will provide the Prime Bidder with database files currently available for all active meters in the field. Based on the combined existing database files, the Prime Bidder shall construct a new digital, comprehensive and accurate database of each meter replaced or upgraded within this project.

The new database will be downloaded/migrated to the City's "Basis-2" Utility Billing System and the AMR system's Data Management Software.

As each meter is being replaced or upgraded at the premise of the water customers, the Prime Bidder shall:

- Verify in the field that the water customer's account number corresponds with the existing meter serial number and with the address of premises where the meter is located, making any corrections required in the database with notable indication of data correction;
- Provide the water customer's name and/or contact person and contact phone number;
- Verify existing meter size, model/type and number of dials of the existing meter;
- Collect final reading of the existing meter during actual meter replacement work;
- Indicate how many water meters are within one building or at the customer's premise;
- Check for presence of fire service line. If a fire line is present, the Prime Bidder shall record it in the new database files and provide size of the line along with whether the line is equipped with a backflow device/double check valve (DCV). Record DCV's serial number and maker, describe the location of this line and the DCV within the building or at the premise, including a digital photo of installation;

- Check for the presence of a Reduce Pressure Zone (RPZ) backflow device on any domestic water service lines. The RPZ shall be installed after the water meter. Check and make record of the size, serial number and maker of the RPZ;
- Record the date of the new meter installation for the assigned account number at the water customer's premise. Record if there was any additional work performed, such as valve replacement or some piping reconfiguration;
- Record the new meter's serial number, meter size, length, type, maker, number of dials and other necessary information to develop detailed database files;
- Provide digital photos of newly installed meters and entire working spaces;
- Provide a schematic of the location of the new meter and MTU unit within the building and/or at the premise;
- Provide MTU unit's serial number; special identification number/code; assigned repeater and or mini-repeater to this specific MTU unit and all other specific information to identify and locate this serial number of the meter and MTU special ID within the City-wide AMR system; and
- Provide the address; location within the building or structure; serial number, identification number and other special codes and ID for each repeater and mini-repeater and antenna within the City-wide AMR system, including a digital photo of installation.

The new database files shall be periodically delivered to the City designated personnel for downloads and integration with the billing and AMR system software.

## 6. Training and Technical Support

The Prime Bidder shall provide two (2) days, eight (8) hour per day of training on the operation and maintenance of the AMR system hardware. This training shall also include "hands-on" training of City technicians on the installation of the new type of meters and assigned radio transition units (MTU) in the field, including trouble shooting, MTU activation and data transfer to repeaters or directly to the Base Station.

An additional three (3) days of onsite application and AMR system training including data acquisition and data management software.

The Prime Bidder shall provide one (1) year technical support for hardware and software of the AMR system. The support shall be an 800 line voice and online/email type of support.

**Comment [MVC1]:** Unclear. Are they suggesting a 1-800 number?

Three (3) copies of the written Operation and Maintenance Manual and Trouble Shooting for AMR system hardware shall be provided to the City as well as drawings, equipment specification and maintenance literature.

## 7. Required Submittals with the Bid Documents

With completed bid documents, the Prime Bidder must also enclose all required submittals:

- Prime Bidder's qualifications and technical experience including proposed sub-contractors for the project, if applicable.
  - include company profile, including experience and expertise of employees of the company involved in the installation and implementation of similar projects as described within this bid.

- A list of recent projects (minimum of three), of similar nature and scale, his/her/its organization has completed (installation of automatic meter reading system including replacement of water meters).
  - include a list of municipalities and water companies where similar work has been performed, as well as, the number of meter installations and meter replacements completed in each municipality or facility. Include the following information:
    - (a) Name of municipalities and/or water companies where similar work was performed;
    - (b) Name of the person/engineer in charge of the project with contact information;
    - (c) Meter manufacture;
    - (d) Dollar amount of contract;
    - (e) Contract completion time;
    - (f) Number of units installed and type for each contract; and
    - (g) Name of the Prime Bidders on the project.
- General outline of how many Managers, Inspectors, Supervisors, Field Technicians, Clerical Assistants, Appointment Schedulers, Inventory Managers or other personnel that may be assigned to the project, along with the function of each of these personnel, and how they will interface with the City and its residents.
- General description of proposed project implementation.
- Detailed specifications of the AMR system, including the hardware and software, that the Prime Bidder proposes for this project.
- Make and model of the types of meters the Prime Bidder intends to use for the project, including each meters' detailed specifications, cut-sheets, performance, accuracy, warranties and application .
- Samples of letters and notifications the Prime Bidder intends to use to gain access to replace the meter.
- All other documents relating to product, equipment and services the Prime Bidder intends to use to achieve objectives set by the City of Yonkers as described in the within bid documents.

Any document submitted which appears vague, incomplete or fails to exhibit the level of management necessary to run the project may be reason for rejection of the bid.

Submittals shall be enclosed in a bound document divided by labeled subject.

## **V. Specifications of Water Meters**

### **1. General Requirements**

It is the intention of these specifications to obtain water meters complete with an electronic register that meets the latest revision of the American Water Works Association (AWWA) standards C700, C701, C702, C707, or C712. All meters shall be equipped with an electronic encoder type meter register. The meter and register shall read in cubic feet and be capable of directly interfacing with various, independent radio frequencies (RF) automatic meter reading (AMR) technologies without the need for any on-site register programming, as well as, can be read manually. Manufacturer must warranty that the encoders will be compatible with all

popular AMR systems from, but not limited to, Transparent Technologies, KP Electronics, Aclara, Itron, Sensus, Neptune and Badger.

All meter assemblies shall be tested and shall be in compliance with the requirements of the latest revision of the AWWA Standards.

These latest AWWA standards shall include but not be limited to:

- C700 – Cold Water Meters; Displacement Type, Bronze Body
- C701 – Turbine Type
- C702 – Compound Type
- C710 – Displacement Type, Plastic Body
- C 713 – Fludic Oscillator Type
- C712 – Single-Jet Type
- C707 – Encoder- Type Remote registration

Meters shall be guaranteed against defects in materials and workmanship for a minimum period of one (1) year from date of installation. A full copy of the meter and register warranty shall be provided with Proposal submittal. Defective parts will be replaced without charge to the City. The limit of guarantee for water meters and component parts shall be as indicated by the manufacturer.

Meters and component manufacturers must submit an affidavit confirming that the items to be supplied meet all the requirements specified herein.

All meters shall be properly boxed to protect them against damage in shipment.

Meters shall be rejected by the City when damages to the container indicate the possibility of damage to the meter. The City will not accept title to the property until inspection and testing of the meters are satisfactory to the City of Yonkers.

#### External Bolts

All external bolts, washer, hardware, etc., shall be of stainless steel or other corrosion resistant composition as approved by the City.

#### Manufacturing

Meters supplied shall be from a company that has manufactured water meters for at least ten (10) years and who manufactures the type and size meters as indicated in these specifications. The specific model being proposed must have been in successful and continuous municipal service for at least two (2) years. The manufacturer shall provide a certificate showing that each meter has been tested for accuracy of registration and that it complies with the accuracy and capacity of appropriate AWWA standards.

## **2. Specification for 5/8” through 1” Cold Water Positive Displacement Meters**

#### Type

Only Magnetic Driven, Sealed Register, Positive Displacement Oscillating Piston or Nutating Disc Type Meters are acceptable for the City of Yonkers.

#### Size

Meters must conform to American Water Works Standard C-700 as most recently revised.

#### Length

Meters must conform to American Water Works Standard C-700 as most recently revised.

#### Cases

All meters shall be made of an advanced engineered polymer or lead free bronze meeting the NSF/ANSI Standard 61, Annex G requirement with a separate measuring element that can be easily removed from the case. All meters shall have cast on them, in raised characters, of the size and direction of water flow through the meter. Cast Iron or Brass frost bottoms shall be provided on 5/8", 3/4", and 1" size meters. The manufacturer's serial number must be permanently affixed to the main-case to aid in identification and must be visible so that it can be read from directly above the water meter. All cases shall be guaranteed to be free from defects for twenty-five (25) years from date of shipment.

#### External Bolts and Washers

All external bolts and washers shall be of corrosion resistant material and be easily removed from the main-case.

#### Measuring Chamber

The measuring chamber shall be a suitable synthetic polymer and shall not be cast as part of the main-case. All piston or disc assemblies shall be interchangeable in all measuring chamber assemblies of the same size.

#### Magnetic Coupling

The motion of the piston will be transmitted to the sealed register through the use of a magnetic coupling.

#### Internal Strainers

All meters must be provided with a corrosion resistant strainer, with an effective straining area at least twice the bore diameter which can be easily removed from the meter without the meter itself being disconnected from the pipeline.

#### Change Gears

Change gears will not be allowed to calibrate the meter. All registers of a particular registration and meter size shall be identical and completely interchangeable.

#### Accuracy and Head Loss

Meters shall meet or exceed current AWWA C-700, latest revision, test flows, head loss and accuracy standards.

#### Pressure Capability

Meters shall operate up to a working pressure of 150 pounds per square inch (psi), without leakage or damage to any parts. The accuracy shall not be affected when operating at this pressure due to possible distortion. Accuracy shall not be affected by variations in pressure up to 150 psi.

#### Registers

Register(s) must be permanent and hermetically sealed and firmly attached to the meter case. A security seal must be provided to prevent easy removal and tampering. The register(s) must be an electronic encoder type with an open reading protocol and be readily adaptable to many

commonly used AMR system products. Pulse, digital, or signal interruption register technologies will not be accepted. The register shall be so designed to permit removal and exchange without the removal of the meter from the service installation or interruption of service water supply.

Register shall be in **Cubic Foot** increments with no less than a one (1) cubic foot reading resolution ( $5/8'' - 1''$ )

The register device shall not be in contact with water being measured.

#### Meter Guarantee

Meters shall be guaranteed against defects in material and workmanship for a period of one (1) year from the date of installation. A full copy of the meter and register warranty shall be provided with the Bid submittal.

### **3. Specifications for 1 1/2" and 2" Cold Water, Positive Displacement Meters**

#### Size

Meters must conform to American Water Works Standard C-700 latest revision.

#### Length

Meters must conform to American Water Works Standard C-700 latest revision.

#### Cases

All meters shall be made of a high quality, low lead bronze and NSF 61 certified with a separate measuring element that can be easily removed from the case. All meters shall have cast on them, in raised characters, of the size and direction of water flow through the meter. Cast Iron or Brass frost bottoms shall be provided on 1 1/2" and 2" size meters. The manufacturer's serial number must be permanently affixed to the main-case to aid in identification and must be visible so that it can be read from directly above the water meter. All cases shall be guaranteed to be free from defects for twenty-five (25) years from the date of shipment.

Meters 1 1/2" and 2" size shall have two-bolt oval flanges, faced and drilled. No threaded body meters are required.

#### External Bolts and Washers

All external bolts and washers shall be of a corrosion resistant material and be easily removed from the main-case.

#### Measuring Chamber

The measuring chamber shall be a suitable synthetic polymer and shall not be cast as part of the main-case. All piston or disc assemblies shall be interchangeable in all measuring chamber assemblies of the same size.

#### Magnetic Coupling

The motion of the piston will be transmitted to the sealed register through the use of a magnetic coupling,

#### Internal Strainers

All meters must be provided with a corrosion resistant strainer, with an effective straining area at least twice the bore diameter, which can be easily removed from the meter without the meter itself being disconnected from the pipeline.

#### Change Gears

Change gears will not be allowed to calibrate the meter. All registers of a particular registration and meter size shall be identical and completely interchangeable.

#### Accuracy and Head Loss

Meters shall meet or exceed AWWA C-700, latest revision, test flows, head loss and accuracy standards.

#### Pressure Capability

Meters shall operate up to a working pressure of 150 pounds per square inch (psi), without leakage or damage to any parts. The accuracy shall not be affected when operating at this pressure due to possible distortion. Accuracy shall not be affected by variations in pressure up to 150 psi.

#### Registers

Register(s) must be permanent and hermetically sealed and firmly attached to meter case. A security seal must be provided to prevent easy removal and tampering. The register(s) must be an electronic encoder type with an open reading protocol and be readily adaptable to many commonly used AMR system products. Pulse, digital or signal interruption register technologies will not be accepted. The register shall be so designed to permit removal and exchange without removal of the meter from the service installation or interruption of service water supply.

Register shall be in **Cubic Foot** increments with not less than a ten (10) hundred Cubic Foot reading resolution.

The register device shall not be in contact with water being measured.

### **4. Specifications for 1 ½"- 8" Cold Water, Single Jet Meters**

Meters must meet the new meter performance specifications outlined in Table 2 and the Prime Bidder shall provide technical documentation to support performance claims.

Table 1

<b>Meter Size</b>	<b>Low Flow at least 95%</b>	<b>Accuracy Range 98.5% to 101.5%</b>	<b>Laying Length</b>
1.5"	½ gpm	¾ - 125 gpm	13"
2"	½ gpm	¾ - 185 gpm	17"
3"	½ gpm	¾ - 245 gpm	11-¾"
4"	½ gpm	¾ - 365 gpm	13-¾"
6"	1¼ gpm	1½ – 880 gpm	17-¾"
6 " HP	5 gpm	8 – 2,000 gpm	22"
8'HP	8 gpm	10 – 2,800 gpm	22"

Prime Bidder shall submit technical documentation to the City for all provided meter sizes and models. Any proposed single-jet meter must have been in service in U.S. water utilities for a minimum of ten (10) years.

#### Applicable Standards

Single-Jet Meters submitted shall meet the following specifications:

- AWWA C712-02 Standard of Cold-Water Meters – Single-jet Type (first Edition); and
- NSF61.

#### Operation

Meters shall utilize only one (1) measuring element (impeller) to achieve performance shown in table above. The register must be permanent and hermetically sealed and firmly attached to the meter case. A security seal must be provided to prevent easy removal and tampering. The register must be an electronic encoder type with an open reading protocol and be readily adaptable to many commonly used AMR products. Pulse, digital or signal interruption register technologies will not be accepted. The register shall be in **Cubic Foot** increments with not less than a ten (10) cubic foot reading resolution for 1.5" or 2" meters and a one hundred (100) Cubic Foot reading resolution for meters 3-inch in size or larger.

#### Installation

Meters shall operate accurately (see above tables) with no straight run of pipe necessary before or after the meter. A strainer shall not be required for accurate operation nor to maintain the warranty.

#### Main Case

The main case shall be made of non-corrosive, lead free (less than 1 percent) Copper Alloy and shall withstand a working pressure of 230 P.S.I. without any seeping or distortion affecting the free operation of the measuring unit. The direction of flow must be permanently indicated on the case. A twenty (20) year guarantee is required for the main case. All submitted models must be approved by NSF 61.

#### Meter Guarantee

Meters shall be guaranteed against defects in material and workmanship for a period of one (1) year from the date of installation. A full copy of the meter and register warranties shall be provided with the Bid submittal.

### **5. Specifications for 3"- 8" Cold Water Turbine Water Meters**

Cold-water turbine type meters shall be AWWA Class II and meet the requirements of the latest revision of AWWA Standard C701-02 and supplementary requirements provided herein. Meters provided shall be the horizontal axis, multi-vane design suited for moderately low to sustained high flow demands, and available in sizes 3" to 8".

All turbine meters shall be equipped with a separate or integrated strainer that shall be attached to the upstream side of the meter. All turbine meters shall be equipped with a valved, in-line test provision, which will be no less than one (1) and one-half-inch (1½") for meters three inch (3") or four inch (4") in size and two inch (2") in diameter for meter sizes six inch (6") and eight inch (8"). Two one and one-half-inch (2½") test ports may be used in place of a single two-inch (2") test port. The test spool requirement will not pertain to manufactured meters which have test ports incorporated into the meter body, however, even these meters will be required to have a

valved connection from the test port to assist with line depressurization and on-site meter testing. All turbine meters must use spools, spacers or other pipeline hardware to meet the laying length dimensions noted below.

#### Size

The size of the Turbine Meter Assembly shall be determined by the nominal size of the opening of the inlet and outlet flanges of the meter.

#### Size

#### Connection

3-inch	Round Flanged Ends with Rubber Ring Gaskets
4-inch	Round Flanged Ends with Rubber Ring Gaskets
6-inch	Round Flanged Ends with Rubber Ring Gaskets
8-inch	Round Flanged Ends with Rubber Ring Gaskets

#### Length

The overall length of the Turbine Meter Assembly, complete with strainer, test spool, and/or spacers shall be the face-to-face dimensions as listed below:

SIZE OF METER	MAXIMUM LENGTH
3"	24"
4"	29"
6"	36.5"
8"	43"

All Turbine Meter Assembly units shall be provided to the City at the maximum length indicated above. Supplemental spools or spacers may be provided to achieve the noted dimension; these components will be considered part of the meter. The Prime Bidder shall also supply all bolts, nuts, gaskets, and studs for standard replacement installations.

#### Cases

Main-cases shall be constructed of Water Works bronze, Epoxy Coated Steel or some other non-corrosive material that can withstand minimum water pressures of not less than 150 psi. In no instance shall repaired casings be acceptable.

#### Strainers

Meters may contain integrated or external body strainers. The strainer body shall be constructed of Water Works bronze, Epoxy Coated Steel or some other non-corrosive material that can withstand minimum water pressures of not less than 150 psi.

Unitized or external strainers shall contain a cover plate that is removable for inspection and debris removal.

#### Connections

Flanges for meters, strainers, spools or spacers 3" through 8" size shall be of the Class 150 bronze, Class 125 Cast Iron, Class 125 – 250 Ductile, Epoxy Coated Steel or Cast Iron, flat faced and shall conform to ANSI Standard B16.24, B16.1, or B16.5 for specified dimensions. No companion flanges are required.

#### Turbine Measuring Chamber

The turbine-measuring chamber shall be Water Works bronze or suitable synthetic polymer construction and shall be secured by stainless steel bolts or other nonferrous fasteners. The

turbine chamber shall be positioned so that water must essentially travel in a straight-line path from the meter inlet to the meter outlet during high flow operation. The measuring cage shall be a self-contained unit attached to the cover for easy removal. The cage shall contain all the elements of the turbine, gear train and thrust bearings. The turbine shall be securely fastened to the shaft and have suitable thrust bearings, both up and down stream or as determined by product design.

#### Registration

Meter registration shall accurately record not less than ninety eight and one half percent nor more than one hundred one and one half percent (98.5% - 101.5%) of actual throughput at all normal test flows.

Table 2

Size of the meter	Normal Flow	Minimum Limits Flow*
3"	8 – 350 gpm	6 gpm
4"	15 – 630 gpm	10 gpm
6"	30 – 1,400 gpm	15 gpm
8"	50 – 3,000 gpm	35 gpm

\* - Meter must register no less than 95% of actual throughput at this rate of flow.

#### Pressure Test

Meters shall be guaranteed to operate successfully at a working pressure of 150 pounds per square inch, without leakage or damage to any component.

#### Registers:

Register(s) must be permanent and hermetically sealed and firmly attached to meter case. A security seal must be provided to prevent easy removal and tampering. The register(s) must be an electronic encoder type with an open reading protocol and be readily adaptable to many commonly used AMI products. Pulse, digital, signal interruption, or battery powered register technologies will not be accepted. Register shall be in Cubic Foot increments with not less than one hundred (100) Cubic Foot for 3" + meters.

### **6. Specifications for 3", 4", and 6" Compound Type Cold Water Meters**

#### Type and General Requirements

Meters shall be of any of the following designs provided and they shall meet all the other noted performance requirements:

- Single Register, Unitized Body, Dual Measuring Elements;
- Dual Register , Separated Body, Dual Measuring Elements; and
- Dual Register, Unitized Body, Dual Measuring Element.

All compound meters shall be equipped with a Strainer that shall be attached to the upstream side of the meter. All compound meters shall be equipped with a valved, in-line test provision which will be no less than one and one half inch (1 1/2") in diameter for meters three inch (3")

and two inch (2") diameter for meters four inch (4") and six inch (6") in size. Two one and one half-inch (2-1 1/2") test ports may be used in place of a single two-inch (2") test port. The test spool requirement will not pertain to manufactured meters that have test ports incorporated into the meter body. However, even these meters will be required to have a valved connection from the test port to assist with line depressurization and on-site meter testing. An overall laying length dimension of the entire assembly is as noted below.

#### Size

The size of the meter assembly shall be determined by the nominal size of the opening of the inlet and outlet flanges of the meter.

#### Length

The overall length of the compound unit complete with strainer, test spool, and/or spacers shall be the face-to-face dimension as listed below:

SIZE OF METER	MAXIMUM LENGTH
3"	24"
4"	29"
6"	36.5"

All three inch (3"), four inch (4"), and six inch (6") Compound Type Meters shall be provided to the City of Yonkers at the **maximum length** indicated above. Supplemental spools or spacers may be provided to achieve the noted dimension; these components will be considered a part of the meter.

#### Cases

Main-cases shall be constructed of Water Works bronze, Epoxy Coated Steel or some other non-corrosive material that can withstand minimum water pressures of not less than 150 psi. In no instance shall repaired casings be acceptable.

#### Strainers

Meters must come equipped with an external body strainer. The strainer body shall be constructed of Water Works bronze, Epoxy Coated Steel, or some other non-corrosive material that can withstand minimum water pressures of not less than 150 psi. External strainer bodies shall contain a cover plate that is removable for inspection and debris removal.

#### External Fasteners

All external fasteners on the meter shall be of stainless steel or nonferrous material.

#### Connections

Flanges for three inch (3"), four inch (4") and six inch (6") size meters shall be of the Class 150 bronze round type or Class 125 Steel Epoxy Coated, flat faced and shall conform to ANSI B 16.24 for specified diameter. No companion flanges are required.

#### Registers

Register(s) must be hermetically sealed and firmly attached to meter case(s). If applicable, a security seal must be provided to prevent easy removal and tampering. The register must be an electronic encoder type with an open (Sensus) reading protocol and be readily adaptable to many commonly used AMR products. Pulse, digital, or signal interruption register technologies will not be accepted. Register(s) shall be in **cubic foot** increments with not less than a one (1) cubic

foot register for low flow side of the element and a ten or one hundred (10 or 100) cubic foot reading resolution for high flow side of the element.

#### Intermediate Gear Trains

When present, intermediate gear trains, including any drive coordinator parts, shall be located in an oil-filled, O-ring gasketed cavity which is completely separated from pipeline or surface water. This does not include lower drive assemblies or directional transfer cases located within the meter cavity.

#### Low Flow Measuring Chamber

The low flow measuring chamber shall be a self-contained unit including a strainer, which can be firmly seated and removed as a unit.

The measuring chamber shall be the oscillating piston or nutating disc positive displacement type and shall be composed of Water Works bronze or a suitable synthetic polymer. All other components of the measuring chamber shall be of corrosion-resistant materials such as stainless steel.

#### High Flow Measuring Chamber

The high flow measuring element shall be a turbine design. The chamber shall be constructed from Water Works bronze or suitable synthetic polymer and shall be secured by stainless steel bolts or other nonferrous fasteners. The turbine chamber shall be positioned so that water must essentially travel in a straight line path from the meter inlet to the meter outlet during high flow operation.

#### Compounding Valve

The compounding valve may be of the weighted, spring loaded or hydraulically actuated design. Valve assembly should provide full closure against a matching seat component and be easily removed for repair.

#### Registration

Meter registration shall accurately record not less than ninety seven percent nor more than one hundred three percent (97% - 103%) of actual throughput at all normal test flows. The crossover flow (that point when measurement transfers from one measuring chamber to the other) accuracy must not be less than ninety five percent (95%). Test flow ranges for all compound type meters must meet those flow requirements as listed in Table 4 below:

Table 3

Size of the Meter	Normal Flow Limits	Minimum Flow*
3"	4 – 300 gpm	1/2 gpm
4"	6 – 450 gpm	3/4 gpm
8"	8 – 850 gpm	1.0 gpm

\* - Meter must register no less than 95% of actual throughput at this rate of flow.

#### Pressure Test

Meters shall be guaranteed to operate successfully at a working pressure of 150 pounds per square inch, without leakage or damage to any component

#### Meter Guarantee

Meters shall be guaranteed against defects in material and workmanship for a period of one (1) year from the date of installation. A full copy of the meter and register warranties shall be provided with the Bid proposal submittal.